

APPENDIX E

STATUTES AND ADMINISTRATIVE RULES

20:10:01:15.01. Burden in contested case proceeding. In any contested case proceeding, the complainant, counterclaimant, applicant, or petitioner has the burden of going forward with presentation of evidence unless otherwise ordered by the commission. The complainant, counterclaimant, applicant, or petitioner has the burden of proof as to factual allegations which form the basis of the complaint, counterclaim, application, or petition. In a complaint proceeding, the respondent has the burden of proof with respect to affirmative defenses.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:16, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 33 SDR 107, effective December 26, 2006.

General Authority: SDCL [49-1-11\(2\)](#),(4), 49-34A-4.

Law Implemented: SDCL [49-1-11\(2\)](#),(4), 49-34A-61.

20:10:01:01.02. Use of rules of civil procedure. Except to the extent a provision is not appropriately applied to an agency proceeding or is in conflict with SDCL chapter [1-26](#), another statute governing the proceeding, or the commission's rules, the rules of civil procedure as used in the circuit courts of this state shall apply.

Source: 33 SDR 107, effective December 26, 2006.

General Authority: SDCL [49-1-11\(2\)](#), (4).

Law Implemented: SDCL [49-1-11\(2\)](#), (4).

1-26-1. Definition of terms. Terms used in this chapter mean:

(1) "Agency," each association, authority, board, commission, committee, council, department, division, office, officer, task force, or other agent of the state vested with the authority to exercise any portion of the state's sovereignty. The term includes a home-rule municipality that has adopted its own administrative appeals process, whose final decisions, rulings, or actions rendered by that process are subject to judicial review pursuant to this chapter. The term does not include the Legislature, the Unified Judicial System, any unit of local government, or any agency under the jurisdiction of such exempt departments and units unless the department, unit, or agency is specifically made subject to this chapter by statute;

(2) "Contested case," a proceeding, including rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing but the term does not include the proceedings relating to rule making other than rate-making, proceedings related to inmate disciplinary matters as defined in § 1-15-20, or student academic proceedings under the jurisdiction of the Board of Regents;

(3) "Emergency rule," a temporary rule that is adopted without a hearing or which becomes effective less than twenty days after filing with the secretary of state, or both;

(4) "License," the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

(5) "Licensing," the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

(6) "Party," each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(7) "Person," all political subdivisions and agencies of the state;

(8) "Rule," each agency statement of general applicability that implements, interprets, or prescribes law, policy, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Statements concerning only the internal management of an agency and not affecting private rights or procedure available to the public;

(b) Declaratory rules issued pursuant to § 1-26-15;

(c) Official opinions issued by the attorney general pursuant to § 1-11-1;

(d) Executive orders issued by the Governor;

(e) Student matters under the jurisdiction of the Board of Regents;

(f) Actions of the railroad board pursuant to § 1-44-28;

(g) Inmate disciplinary matters as defined in § 1-15-20;

(h) Internal control procedures adopted by the Gaming Commission pursuant to § 42-7B-25.1;

(i) Policies governing specific state fair premiums, awards, entry, and exhibit requirements adopted by the State Fair Commission pursuant to § 1-21-10;

(j) Lending procedures and programs of the South Dakota Housing Development Authority; and

(8A) "Small business," a business entity that employs twenty- five or fewer full-time employees.

(9) "Substantial evidence," such relevant and competent evidence as a reasonable mind might accept as being sufficiently adequate to support a conclusion.

Source: SDC 1939, § 65.0106; SL 1966, ch 159, § 1; SL 1968, ch 210; SL 1972, ch 8, § 3; SL 1973, ch

264, § 1; SL 1974, ch 16, §§ 1, 2; SL 1975, ch 16, §§ 7, 8; SL 1976, ch 14, §§ 1, 2; SL 1977, ch 13, § 1; SL 1977, ch 14; SL 1980, ch 17; SL 1982, ch 20, § 2; SL 1983, ch 199, § 1; SL 1989, ch 20, § 42; SL 1990, ch 343, § 9A; SL 1992, ch 8, § 3; SL 1995, ch 3, § 2; SL 1996, ch 10, § 1; SL 1996, ch 130, § 15A; SL 1999, ch 6, § 1; SL 2004, ch 20, § 1; SL 2012, ch 7, § 1; SL 2014, ch 73, § 1.

1-26-36. Weight given to agency findings--Disposition of case--Grounds for reversal or modification--Findings and conclusions--Costs. The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in light of the entire evidence in the record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted

exercise of discretion.

A court shall enter its own findings of fact and conclusions of law or may affirm the findings and conclusions entered by the agency as part of its judgment. The circuit court may award costs in the amount and manner specified in chapter 15-17.

Source: SL 1966, ch 159, § 15 (7); SL 1972, ch 8, § 29; SL 1977, ch 13, § 16; SL 1978, ch 13, § 10; SL 1978, ch 17; SL 1983, ch 6, § 2.

49-41B-27. Construction, expansion, and improvement of facilities. Utilities which have acquired a permit in accordance with the provisions of this chapter may proceed to improve, expand, or construct the facility for the intended purposes at any time, subject to the provisions of this chapter; provided, however, that if such construction, expansion and improvement commences more than four years after a permit has been issued, then the utility must certify to the Public Utilities Commission that such facility continues to meet the conditions upon which the permit was issued.

Source: SL 1977, ch 390, § 29.

49-41B-1. Legislative findings--Necessity to require permit for facility. The Legislature finds that energy development in South Dakota and the Northern Great Plains significantly affects the welfare of the population, the environmental quality, the location and growth of industry, and the use of the natural resources of the state. The Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a facility may not be constructed or operated in this state without first obtaining a permit from the commission.

Source: SL 1977, ch 390, § 2; SL 2005, ch 250, § 1.

49-41B-2. Definition of terms. Terms as used in this chapter mean:

- (1) "AC/DC conversion facility," an asynchronous AC to DC to AC tie that is directly connected to a transmission facility or a facility that connects an AC transmission facility with a DC transmission facility or vice versa;
- (2) "Associated facilities," facilities which include aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, or cooling ponds;
- (3) "Carbon dioxide," a fluid that consists of more than ninety percent carbon dioxide molecules compressed in a supercritical state;
- (4) "Commission," the Public Utilities Commission;
- (5) "Construction," any clearing of land, excavation, or other action that would affect the environment of the site for each land or rights of way upon or over which a facility may be constructed or modified, but not including activities incident to preliminary engineering or environmental studies. This term includes modifications to facilities as defined in § 49-41B-2.2;
- (6) "Energy conversion facility," any new facility, or facility expansion, designed for or capable of generation of one hundred megawatts or more of electricity, but does not include any wind energy facilities;
- (7) "Facility," any energy conversion facility, AC/DC conversion facility, transmission facility, or wind energy facility, and associated facilities;
- (8) "Permit," the permit issued by the commission under this chapter required for the construction and operation of a facility;
- (9) "Person," an individual, partnership, limited liability company, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other public or private entity, however organized;
- (10) "Siting area," that area within ten miles in any direction of a proposed energy conversion facility, AC/DC conversion facility, or which is determined by the commission to be affected by a proposed energy conversion facility;
- (11) "Trans-state transmission facility," an electric transmission line and its associated facilities which originates outside the State of South Dakota, crosses this state and terminates outside the State of South Dakota; and which transmission line and associated facilities delivers electric power and energy of twenty-five percent or less of the design capacity of such line and facilities for use in the State of South Dakota;
- (12) "Utility," any person engaged in and controlling the generation or transmission of electric energy and gas or liquid transmission facilities as defined by § 49-41B-2.1;
- (13) "Wind energy facility," a new facility, or facility expansion, consisting of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems, that converts wind movement into electricity and that is designed for or capable of generation of one hundred megawatts or more of electricity. A wind energy facility expansion includes the addition of new wind turbines, designed for or capable of generating twenty-five megawatts or more of electricity, which are to be managed in common and integrated with existing turbines and the combined megawatt capability of the existing and new turbines is one hundred megawatts or more of electricity. The number of megawatts generated by a wind energy facility is determined by adding the nameplate power generation capability of each wind turbine.

Source: SL 1977, ch 390, § 3; SL 1979, ch 318, § 2; SL 1980, ch 327, § 2; SL 1980, ch 328, § 1; SL 1981, ch 341; SL 1981, ch 342; SL 1983, ch 348; SL 1994, ch 351, § 140; SL 1994, ch 358, §§ 2, 3; SL

2005, ch 250, § 2; SL 2006, ch 242, § 1; SL 2009, ch 243, § 1; SL 2010, ch 226, § 1; SL 2013, ch 237, § 1; SL 2015, ch 235, § 1.

49-41B-3. Ten-year plan required of utility planning to own or operate energy conversion facilities--Updating of plan--Contents. Every utility which owns or operates or plans within the next ten years to own or operate energy conversion facilities shall develop and submit a ten-year plan to the Public Utilities Commission. The plan shall be updated every second year after its submission. The plan shall contain the following:

- (1) A description of the general location, size, and type of energy conversion facilities or transmission facilities of two hundred fifty kilovolts or more to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the planning period;
- (2) A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region;
- (3) A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with such information being as geographically specific as possible and a description of the manner and extent to which the utility will meet the projected demand; and
- (4) Any other relevant information as may be requested by the commission.

Source: SL 1977, ch 390, § 23.

49-41B-7. Assessment by local review committee--Factors included. The local review committee shall meet to assess the extent of the potential social and economic effect to be generated by the proposed facility, to assess the affected area's capacity to absorb those effects at various stages of construction, and formulate mitigation measures. The assessment of the local review committee shall include consideration of the temporary and permanent alternatives in the following areas:

- (1) Housing supplies;
- (2) Educational facilities and manpower;
- (3) Water supply and distribution;
- (4) Waste water treatment and collection;
- (5) Solid waste disposal and collection;
- (6) Law enforcement;
- (7) Transportation;
- (8) Fire protection;
- (9) Health;
- (10) Recreation;
- (11) Government; and
- (12) Energy.

Source: SL 1977, ch 390, § 12; SL 2010, ch 226, § 5.

49-41B-8. Employment of personnel by committee--Expenses--Information furnished by commission. The local review committee may employ such persons as determined by the Public Utilities Commission which may be required to carry out the provisions of § 49-41B-7 and the expenses of said staff shall be paid from the initial filing fee. The commission shall furnish copies of the application to the members of the local review committee and all other information which the commission determines that the committee should receive.

Source: SL 1977, ch 390, § 14.

49-41B-13. Denial, return, or amendment of application--Grounds--Applicant permitted to make changes. An application may be denied, returned, or amended at the discretion of the Public Utilities Commission for:

- (1) Any deliberate misstatement of a material fact in the application or in accompanying statements or studies required of the applicant;
- (2) Failure to file an application generally in the form and content required by this chapter and the rules promulgated thereunder; or
- (3) Failure to deposit the initial amount with the application as required by § 49-41B-12.

The commission shall, upon denying or returning an application, provide the applicant with reasons for such action and shall allow the applicant to make changes in the application in order to comply with the requirements of this chapter.

Source: SL 1977, ch 390, § 28.

49-41B-14. Further data provided prior to hearings if required--Prehearing conference. The Public Utilities Commission may require that further data be provided prior to the public hearings. The commission or applicant may also request that a prehearing conference be held prior to a public hearing which request shall be granted.

Source: SL 1977, ch 390, § 8.

49-41B-19. Evidence from state or local agencies relative to environmental, social and economic conditions. The Public Utilities Commission shall also hear and receive evidence presented by any state department, agency, or units of local government relative to the environmental, social, and economic conditions and projected changes therein.

Source: SL 1977, ch 390, § 17.

49-41B-20. Final report heard by commission at final hearing--Decision on application--Adoption of committee's report. The final report shall be heard by the Public Utilities Commission at the final hearing wherein the commission makes its decision on the application for a permit. The local review committee report may be adopted in whole or in part, at the discretion of the commission.

Source: SL 1977, ch 390, § 13.

49-41B-21. Environmental impact statement. Prior to the issuance of a permit, the commission may prepare or require the preparation of an environmental impact statement that complies with the provisions of chapter 34A-9.

Source: SL 1977, ch 390, § 16; SL 2007, ch 274, § 2.

49-41B-22.1. Reapplication for permit--Applicant's burden of proof--Environmental impact statement not required. Nothing contained herein shall prohibit an applicant from reapplying for a permit previously denied pursuant to § 49-41B-24 or 49-41B-25 within three years from the date of the denial of the original permit. Upon the first such reapplication, the applicant shall have the burden of proof to establish only those criteria upon which the original permit was denied, provided that nothing in the reapplication materially changes the information presented in the original application regarding those criteria upon which the original permit was not denied. However, nothing contained in this provision shall prohibit the Public Utilities Commission from requiring such applicant to meet its burden of proof as to any criteria, upon a specific finding by the commission of a material change in the circumstances regarding those criteria, but the Public Utilities Commission shall not, in any event, prepare or require the preparation of an environmental impact statement.

Source: SL 1982, ch 333, § 1.

49-41B-22.2. Reapplication for permit--Discussion of commission as to applicant's burden of proof. If a second or subsequent reapplication is filed within three years, or a reapplication is filed after three years, following a denial of a permit pursuant to § 49-41B-24 or 49-41B-25, the Public Utilities Commission may in its discretion decide if an applicant shall have the burden of proof to establish all criteria required in an original application.

Source: SL 1982, ch 333, § 2.

49-41B-23. Waiver of compliance with chapter on grounds of urgency, disaster, or civil disorder. The Public Utilities Commission may waive compliance with and provisions of this chapter if the utility or person submitting an application pursuant to the chapter demonstrates to the commission at a public hearing that an immediate, urgent need for a facility or an associated facility exists and that the utility or person submitting the application did not have knowledge that a need for the facility existed sufficiently in advance to fully comply with the provisions of this chapter. The commission may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person that a facility, or an associated facility, has been damaged or destroyed as a result of fire, flood, or other natural disaster, or as a result of insurrection, war, or other civil disorder, and there exists a need for construction of a new facility, or the relation of a previously existing facility or associated facility in order to promote the public health, safety or welfare.

Source: SL 1977, ch 390, § 30.

49-41B-29. Transfer of permit--Commission approval--Rules. A permit may be transferred, subject to the approval of the Public Utilities Commission to a person who agrees to comply with the terms, conditions, and modifications contained therein. The commission shall adopt rules pursuant to the authority granted under this chapter.

Source: SL 1977, ch 390, § 4.

49-41B-33. Revocation or suspension of permit--Grounds. A permit may be revoked or suspended by the Public Utilities Commission for:

- (1) Any misstatement of a material fact in the application or in accompanying statements or studies required of the applicant, if a correct statement would have caused the commission to refuse to grant a permit; or
- (2) Failure to comply with the terms or conditions of the permit; or
- (3) Violation of any material provision of this chapter or the rules promulgated thereunder.

Source: SL 1977, ch 390, § 27.
