

HOUSE BILL NO. 1324

Introduced by

Representatives Keiser, Kasper, Klein

Senators O'Connell, Robinson, Trenbeath

1 A BILL for an Act to create and enact a new section to chapter 49-05 of the North Dakota
2 Century Code, relating to advance determinations of prudence and ratemaking principles for
3 public utilities.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 49-05 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Advance determination of prudence and ratemaking principles.** A public utility
8 proposing to construct, lease, or make improvements to either or both an energy conversion
9 facility or transmission facility or proposing to enter into a contract for the purchase of energy
10 from another entity or person for the purpose of ensuring reliable electric service to its
11 customers may file an application with the commission for an advance determination of
12 prudence regarding the proposal. As part of the application, the public utility also may request
13 that the commission determine ratemaking principles that will be applied to the public utility's
14 investment in the energy conversion or transmission facility or the energy contract cost.

- 15 1. Ratemaking principles a public utility may propose and the commission may use
16 include the following:
- 17 a. Authorized return on common equity.
 - 18 b. Capital structure to finance the construction, lease, or improvements of the
19 energy conversion facility and transmission facility.
 - 20 c. Estimated service life and depreciation rates for cost of service purposes.
- 21 2. The applicable ratemaking principles to be used in each instance must be
22 determined in a contested case hearing which may be combined with a
23 determination of prudence and an application for a certificate pursuant to chapter
24 49-22.

- 1 3. A commission hearing must be held and an order issued by the commission within
2 one hundred eighty days after the filing of an application by the public utility. If,
3 after hearing, the commission determines that the public utility's decision to
4 construct or lease a facility or make improvements thereto, or to purchase energy
5 is reasonable and prudent, the commission shall issue an order so stating and also
6 shall address the ratemaking principles requested by the public utility. The
7 commission may impose conditions requiring the public utility to monitor and report
8 to the commission pursuant to a specified schedule concerning any significant
9 changes in costs, load, regulatory, economic, or other assumptions upon which the
10 ratemaking principles were decided. Costs to be included in the public utility's
11 electric rates must be in accordance with this chapter, except as otherwise
12 provided in this section.
- 13 4. The commission's order determining prudence and addressing ratemaking
14 principles must be applied in any future rate case to the investment and costs of
15 the facility or contract for the purchase of energy and are binding for ratemaking
16 purposes in all future commission proceedings involving the public utility.
- 17 5. If the commission fails to issue an order determining the prudence of a proposal
18 within one hundred eighty days after filing by a public utility, the facility or contract
19 for the purchase of energy is deemed prudent as proposed and any ratemaking
20 principles requested by the public utility in its application are deemed approved by
21 the commission and are binding in all future rate proceedings involving the public
22 utility.
- 23 6. The commission's order setting forth applicable ratemaking principles must be
24 issued before the public utility's commencement of construction, lease, or
25 improvements to a facility or its execution of the contract for purchase of energy.
- 26 7. If at any time following an initial commission order the commission, following a
27 subsequent hearing, determines that continuation of a project is no longer prudent
28 or that its prior order should be modified, the public utility must be allowed to
29 recover in its rates, and in a timely manner consistent with the public utility's
30 financial obligations, the amounts the public utility already has expensed, incurred,
31 or obligated on a project, including interest expense and a return on equity

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- 1 invested in the project up to the time the new order is entered even though the
- 2 project may never be fully operational or used by the public utility to serve its
- 3 customers.