

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1221

Introduced by

Representatives Keiser, Vigesaa, Williams

Senators Klein, Krebsbach, O'Connell

1 A BILL for an Act to amend and reenact section 49-05-16 of the North Dakota Century Code,
2 relating to advance determination of prudence; and to provide an effective date.

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

4 **SECTION 1. AMENDMENT.** Section 49-05-16 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **49-05-16. Advance determination of prudence.**

7 In this section, unless the context otherwise requires, resource addition means construction,
8 modification, purchase, or lease of an energy conversion facility, renewable energy facility,
9 demand response system, transmission facility, or a contract to acquire energy, capacity, or
10 demand response for the purpose of providing electric service. A public utility ~~proposing to~~
11 ~~construct, lease, or make improvements to an energy conversion facility, renewable energy~~
12 ~~facility, transmission facility, or proposed energy purchase contract from another entity or person~~
13 ~~for the purpose of ensuring reliable electric service to its customers~~ that intends to make a
14 resource addition may file an application with the commission for an advance determination of
15 prudence regarding the ~~proposal~~ resource addition. The commission shall pay the expenses
16 associated with investigating the application made by the public utility for prudence of a
17 resource addition from the application fee paid by the public utility in accordance with section
18 49-02-02.

- 19 1. The commission may issue an order approving the prudence of an ~~electric~~ resource
20 addition if:
- 21 a. The public utility files with its application a projection of costs to the date of the
22 anticipated commercial operation of the ~~electric~~ resource addition;
- 23 b. The public utility files with its application a fee in the amount of one hundred
24 twenty-five thousand dollars. Upon request of the commission and with the

- 1 approval of the emergency commission, the applicant shall pay such additional
2 fees as are reasonably necessary for completion of the application process by
3 the commission. The commission may waive or reduce the fee.
- 4 c. The commission provides notice and holds a hearing, if appropriate, in
5 accordance with section 49-02-02; and
- 6 d. The commission determines that the resource addition is ~~reasonable and~~
7 prudent. For facilities located or to be located in this state the commission, in
8 determining whether the resource addition is ~~reasonable and~~ prudent, shall
9 consider the benefits of having the ~~energy conversion facility, renewable energy~~
10 ~~facility, transmission facility, or facility generating the energy to be~~
11 ~~purchased~~resource addition located in this state.
- 12 2. The commission order must be rendered no later than seven months after the public
13 utility files its application requesting a prudence determination of an ~~electric~~ resource
14 addition.
- 15 3. A resource addition approved by the commission is subject to ~~annual~~ reporting
16 requirements until commercial operation of the resource addition. The public utility
17 shall provide periodic reports, as directed by the commission, which must include a
18 description of the status of the resource addition and any changes in material
19 circumstances affecting the resource addition.
- 20 4. The commission's order determining prudence of the resource ~~adjustment~~addition is
21 binding for ratemaking purposes.
- 22 5. ~~If at any time following~~Following an initial commission order, the commission, ~~following~~
23 ~~a subsequent hearing, determines may, upon notice and hearing, if appropriate, in~~
24 accordance with section 49-02-02 determine that continuation of a ~~project~~resource
25 addition is no longer prudent or that its prior order should be modified, ~~the~~ Expenses
26 incurred in processing the case must be paid from the fee, including any previously
27 made refund thereof, filed with the prudence determination application for the resource
28 addition.
- 29 6. The public utility may recover in its rates, and in a timely manner consistent with the
30 public utility's financial obligations, the amounts the public utility ~~already has~~
31 ~~expended,~~reasonably incurred, or obligated on a ~~project~~prudent resource addition,

1 including interest expense and a return on equity invested in the project up to the time
2 the new order is entered accrued allowance for funds used during construction, even
3 though the project resource addition may never be fully operational or used by the
4 public utility to serve its customers. The cost amortization period for a discontinued
5 resource addition may not exceed five years from the date commencement of the
6 recovery is approved by the commission. No return on amounts incurred or obligated
7 by the public utility may be authorized for the period after the resource addition is
8 discontinued. The public utility may request an order from the commission for deferred
9 accounting treatment for costs incurred for a discontinued resource addition.
10 6.7. There is a rebuttable presumption that an energy conversion facility, renewable energy
11 facility, transmission facility, or facility generating the energy to be purchased which is a
12 resource addition located in the state is prudent.