

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1221
(Representatives Keiser, Vigesaa, Williams)
(Senators Klein, Krebsbach, O'Connell)

AN ACT to amend and reenact section 49-05-16 of the North Dakota Century Code, relating to advance determination of prudence; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

49-05-16. Advance determination of prudence.

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

1. The commission may issue an order approving the prudence of an ~~electric~~ resource addition if:
 - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the ~~electric~~ resource addition;
 - b. The public utility files with its application a fee in the amount of one hundred twenty-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
 - c. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
 - d. The commission determines that the resource addition is ~~reasonable and~~ prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is ~~reasonable and~~ prudent, shall consider the benefits of having the ~~energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased~~ resource addition located in this state.
2. The commission order must be rendered no later than seven months after the public utility files its application requesting a prudence determination of an ~~electric~~ resource addition.
3. A resource addition approved by the commission is subject to ~~annual~~ reporting requirements until commercial operation of the resource addition. The public utility shall provide periodic reports, as directed by the commission, which must include a description of the status of the resource addition and any changes in material circumstances affecting the resource addition.

4. The commission's order determining prudence of the resource ~~adjustment~~addition is binding for ratemaking purposes.
5. ~~If at any time following~~Following an initial commission order, the commission, ~~following a subsequent hearing, determines~~ may, upon notice and hearing, if appropriate, in accordance with section 49-02-02 determine that continuation of a ~~project~~resource addition is no longer prudent or that its prior order should be modified, ~~the~~. Expenses incurred in processing the case must be paid from the fee, including any previously made refund thereof, filed with the prudence determination application for the resource addition.
6. The public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expensed, reasonably incurred, or obligated on a ~~project~~prudent resource addition, including interest expense and a return on equity invested in the project up to the time the new order is enteredaccrued allowance for funds used during construction, even though the ~~project~~resource addition may never be fully operational or used by the public utility to serve its customers. The cost amortization period for a discontinued resource addition may not exceed five years from the date commencement of the recovery is approved by the commission. No return on amounts incurred or obligated by the public utility may be authorized for the period after the resource addition is discontinued. The public utility may request an order from the commission for deferred accounting treatment for costs incurred for a discontinued resource addition.
- 6-7. There is a rebuttable presumption that an ~~energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased which is~~ resource addition located in the state is prudent.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1221.

House Vote: Yeas 94 Nays 0 Absent 0

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State