

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2137
(Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 6 of section 49-02-02 and sections 49-05-04, 49-05-04.2, 49-05-04.3, and 49-05-16 of the North Dakota Century Code, relating to powers of the public service commission and electric and gas public utility application fees; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 49-02-02 of the North Dakota Century Code is amended and reenacted as follows:

6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on ~~rate increase~~ applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any hearing or investigation must ~~upon the order of the commission~~ be deducted from the application fee paid by the public utility involved. The commission shall ascertain the costs and expenditures. ~~After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility. The billing and order may be made from time to time during the hearing or investigation or at the conclusion thereof, as the commission determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment draw interest at the rate of six percent per annum from the date of receipt of the order. All costs and expenses collected~~ The application fees received by the commission under ~~this subsection~~ chapter 49-05 must be deposited in a special account within the public service commission. All moneys deposited in the account are appropriated on a continuing basis to the commission to pay expenses incurred in the processing of cases in which application fees are required. The commission shall refund the portion of a fee collected under chapter 49-05 which exceeds the expenses incurred for processing the case for which the fee was paid.

SECTION 2. AMENDMENT. Section 49-05-04 of the North Dakota Century Code is amended and reenacted as follows:

49-05-04. Application for increase of rates - Information required - Fee. Any public utility requesting an increase in its rates above the maximum approved or prescribed by the commission shall furnish the commission:

1. The original cost of all its property.
2. The date of the acquisition of said property.
3. The amount of money invested in said property.
4. The amount of stock outstanding.
5. The amount of bonds outstanding against said property.

6. All books, papers, and memoranda of the utility showing the financial condition thereof.
7. Its total monthly salaries and wage expense for such time as the commission may request.
8. An itemized statement of its expenditures.
9. The details of its profit and loss account.
10. All other books, papers, vouchers, and accounts which the commission shall ask to have produced as evidence at the hearing.
11. An application 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 shall pay the expenses of investigating a rate increase application under this section from the application fee paid by the public utility in accordance with section 49-02-02. The commission may waive or reduce the fee.

SECTION 3. AMENDMENT. Section 49-05-04.2 of the North Dakota Century Code is amended and reenacted as follows:

49-05-04.2. Rate adjustment - Federal environmental mandate costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06, which provides for an adjustment of rates to recover jurisdictional capital costs and associated operating expenses incurred by a public utility to comply with federal environmental mandates on existing electricity generating stations. For purposes of this section, federal environmental mandates are limited to any requirements under the Clean Air Act, the Clean Water Act, or any other federal law or rule designed to protect the environment. Associated operating expenses are costs incurred by the public utility to comply with the environmental mandate. The tariff must:
 - a. Allow the public utility to recover on a timely basis its investment in capital costs and associated operating expenses incurred to meet federal environmental mandates not reflected in the utility's general rate schedule.
 - b. Allow a return on the public utility's investment made to meet federal environmental mandates at the level approved in the utility's most recent general rate case.
 - c. Provide a current return on construction work in progress to meet federal environmental mandates provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means.
 - d. Terminate cost recovery after the public utility's costs and expenses to meet federal environmental mandates have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:
 - a. A description and quantification of the costs and expenses incurred by the public utility to meet federal environmental mandates which are subject to recovery;
 - b. A schedule for implementation of the applicable projects; ~~and~~
 - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and

- d. An application fee in the amount of fifty 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.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs and expenses to meet federal environmental mandates are not reasonable and prudent. The commission ~~may order~~ shall pay the expenses of investigating a rate ~~adjustments~~ adjustment to meet federal environmental mandates under this section ~~be from the application fee~~ paid by the public utility in accordance with section 49-02-02. The public utility has the burden of proving that the rate adjustment complies with the tariff and that the costs and expenses incurred to meet federal environmental mandates are reasonable and prudent.

SECTION 4. AMENDMENT. Section 49-05-04.3 of the North Dakota Century Code is amended and reenacted as follows:

49-05-04.3. Rate adjustment - Transmission facility costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06 which provides for an adjustment of rates to recover jurisdictional capital and operating costs incurred by a public utility for new or modified electric transmission facilities. For purposes of this section, an electric transmission facility includes an electric transmission line as defined in chapter 49-21.1 and other transmission line equipment, including substations, transformers, and other equipment constructed to improve the power delivery capability or reliability of the electric transmission system; and operating costs include federally regulated costs charged to or incurred by the public utility to increase regional transmission capacity or reliability. The tariff must:
 - a. Allow the public utility to recover on a timely basis its investment and associated costs for new or modified electric transmission facilities not reflected in the utility's general rate schedule;
 - b. Allow a return on the public utility's investment made for new or modified electric transmission facilities at the level approved in the utility's most recent general rate case;
 - c. Provide a current return on construction work in progress for new or modified electric transmission facilities, provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means; and
 - d. Terminate cost recovery after the public utility's costs for new or modified electric transmission facilities have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:
 - a. A description and quantification of the costs incurred by the public utility for new or modified electric transmission facilities which are subject to recovery;
 - b. A schedule for implementation of the applicable transmission facility projects; ~~and~~
 - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and

- d. An application fee in the amount of fifty 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.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs for new or modified electric transmission facilities are not reasonable and prudent. The commission ~~may order the public utility to~~ shall pay the expenses of investigating ~~a rate adjustment~~ adjustment for recovery of transmission facility costs under this section ~~from the application fee paid by the public utility~~ in accordance with section 49-02-02.

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

49-05-16. Advance determination of prudence. 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 may file an application with the commission for an advance determination of prudence regarding the proposal. The commission ~~may order that~~ shall pay the expenses associated with investigating the application made by the public utility for prudence of a resource addition ~~be~~ 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.~~ d. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
 - ~~e.~~ 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 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.
4. The commission's order determining prudence of the resource adjustment is binding for ratemaking purposes.

5. If at any time following an initial commission order, the commission, following a subsequent hearing, determines that continuation of a project is no longer prudent or that its prior order should be modified, 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, incurred, or obligated on a project, including interest expense and a return on equity invested in the project up to the time the new order is entered even though the project may never be fully operational or used by the public utility to serve its customers.
6. 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 located in the state is prudent.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2137.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 94 Nays 0 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State