

**FIRST ENGROSSMENT
with Conference Committee Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED 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 determination of prudence for a public utility's proposed new
3 construction, lease, or improvement of an energy conversion facility, renewable energy facility,
4 transmission facility, or proposed energy purchase contract.

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

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

8 **Advance determination of prudence.** A public utility proposing to construct, lease, or
9 make improvements to an energy conversion facility, renewable energy facility, transmission
10 facility, or proposed energy purchase contract from another entity or person for the purpose of
11 ensuring reliable electric service to its customers may file an application with the commission
12 for an advance determination of prudence regarding the proposal. The commission may order
13 that expenses associated with investigating the application made by the public utility for
14 prudence of a resource addition be paid by the public utility in accordance with section
15 49-02-02.

16 1. The commission may issue an order approving the prudence of an electric
17 resource addition if:

18 a. The public utility files with its application a projection of costs to the date of
19 the anticipated commercial operation of the electric resource addition;

20 b. The commission provides notice and holds a hearing, if appropriate, in
21 accordance with section 49-02-02; and

22 c. The commission determines that the resource addition is reasonable and
23 prudent. For facilities located or to be located in this state the commission, in
24 determining whether the resource addition is reasonable and prudent, shall

- 1 consider the benefits of having the energy conversion facility, renewable
2 energy facility, transmission facility, or facility generating the energy to be
3 purchased located in this state.
- 4 2. The commission order must be rendered no later than seven months after the
5 public utility files its application requesting a prudence determination of an electric
6 resource addition.
- 7 3. A resource addition approved by the commission is subject to annual reporting
8 requirements until commercial operation of the resource addition.
- 9 4. The commission's order determining prudence of the resource adjustment is
10 binding for ratemaking purposes.
- 11 5. If at any time following an initial commission order, the commission, following a
12 subsequent hearing, determines that continuation of a project is no longer prudent
13 or that its prior order should be modified, the public utility may recover in its rates,
14 and in a timely manner consistent with the public utility's financial obligations, the
15 amounts the public utility already has expensed, incurred, or obligated on a
16 project, including interest expense and a return on equity invested in the project up
17 to the time the new order is entered even though the project may never be fully
18 operational or used by the public utility to serve its customers.
- 19 6. There is a rebuttable presumption that an energy conversion facility, renewable
20 energy facility, transmission facility, or facility generating the energy to be
21 purchased which is located in the state is prudent.