CHAPTER 49-05
PROCEDURE ON REGULATION OF PUBLIC UTILITIES

49-05-01. Who may make a complaint.

Complaint may be made by the commission on its own motion, or by any person or association, by petition or complaint in writing, setting forth any fact or thing done or omitted to be done by any public utility, including any rule, regulation, or rate established or fixed by or for any public utility, in violation or claimed violation of any provision of law or any order or rule of the commission.

49-05-02. Right to make certain complaints limited.

No complaint as to the reasonableness of any rates or charges of any heat, gas, electrical, water, or telecommunications utility shall be entertained by the commission except when made upon its own motion, unless the same is signed by the governing body of the county or city, if any, within which the alleged violation occurred, or by not less than ten percent of the consumers or purchasers of such heat, gas, electrical, water, or telecommunications service.

49-05-03. Hearing on complaint.

The commission shall fix the time and place of hearing upon any complaint and shall serve notice thereof upon the complainant and the utility affected thereby. Such notice shall be given and proceedings shall be conducted as provided by chapter 28-32.

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 seventy-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.

49-05-04.1. Test year - Public utility rate filings.

1. A public utility, at its option, may use any one of the following twelve-month periods as its test year for rate filings with the commission:
   a. A historical test year, which may be either the latest twelve-month period for which actual data is available at the time of filing new schedules or the latest calendar or fiscal year for which actual data is available at the time of filing new schedules.
   b. A current test year, which is any consecutive twelve-month period ending not later than twelve months after the date new schedules are filed. A public utility selecting a current test year also shall file data for the twelve-month period

immediately preceding the current test year selected and that period is the "historical period" for the public utility.

c. A future test year, which is any consecutive twelve-month period ending no later than twenty-four months after the date new schedules are filed. A public utility selecting a future test year must file data for the twelve consecutive months immediately preceding the future test year and that period is the "current period" for the public utility.

2. A public utility selecting a current or future test year shall present the following information:
   a. A comparison of forecast data to historical period data to demonstrate the reliability and accuracy of the utility's forecast including a comparison of the prior years' forecast or budgeted data to actual data for those periods.
   b. A statement that the public utility's forecast is reasonable, reliable, and was made in good faith and that all basic assumptions used in making or supporting the forecast are reasonable, evaluated, identified, and justified to allow the commission to test the appropriateness of the forecast.
   c. A statement that the accounting treatment that has been applied to anticipated events and transactions in the forecast is the same as the accounting treatment to be applied in recording the events once they have occurred.
3. The public utility may update its filing for material changes as actual data becomes available up to thirty days before the hearing. Except for good cause shown, a public utility may not submit more than one updated filing before the hearing. In the absence of an updated filing by the public utility, the commission may require a public utility to update its filing when the commission staff introduces evidence that a material change has occurred.
4. A public utility may propose estimated or calculated adjustments to the selected historical or current test year for all known and measurable changes in operating results as measured in the test year. The adjustments must be made in the same context and format as the information was provided in the original filing. The adjustments may reflect material changes in plant investment, operating revenues, expenses, and capital structure if the changes occurred during the selected historical or current test year or are reasonably certain to occur subsequent to the selected test year within twelve months from the date of the rate filing.

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;
   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 one hundred 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 shall pay the expenses of investigating a rate adjustment to meet federal environmental mandates under this section 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.

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;
   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 one hundred 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 shall pay the expenses of investigating a rate 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.

49-05-04.4. Integrated resource plan.

An electric public utility shall submit integrated resource plans to the commission. The commission may adopt rules and regulations for preparation and submission of integrated resource plans. At the request of the commission, the applicant shall pay a fee reasonably necessary for completing an investigation of the integrated resource plan up to an amount not exceeding two hundred fifty thousand dollars. If additional funds are reasonably necessary to pay the costs of an investigation of the integrated resource plan, 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 an investigation by the commission.

49-05-05. Changes in tariff rates - Notice to commission - Filing fee.

A change may not be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules, classifications, or service which have been filed and published by any public utility, except after thirty days' notice to the commission. The notice must state plainly the changes proposed. The commission, for a good cause shown, may allow changes upon less than the notice specified in this section, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

49-05-06. Hearing by commission on proposed change of rates.

1. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, or rule, increasing or decreasing, or resulting in an increase or decrease in any rate, is filed with the commission, the commission may suspend by motion the rate, classification, contract, practice, or rule but the period of suspension may not extend more than six months beyond the time when it otherwise would go into effect unless the commission and the utility filing the notice or schedule agree to the extension. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of the rate, classification, contract, practice, or rule. On such hearing, the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, rule, or practice is just and reasonable is upon the public utility applying for the increase. All such rates, classifications, contracts, practices, or rules, not suspended, on the expiration of thirty days from the time of filing with the commission, or of such lesser time as the commission may grant, become effective rates, classifications, contracts, practices, or rules, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.
2. Notwithstanding that the commission may suspend a filing and order a hearing, a public utility may file for interim rate relief as part of its general rate increase application and filing. If interim rates are requested, the commission shall order that the interim rate schedule take effect no later than sixty days after the initial filing date and without a public hearing. The interim rate schedule must be calculated using the proposed test year cost of capital, rate base, and expenses, except that the schedule must include:

a. A rate of return on common equity for the public utility equal to that authorized by the commission in the public utility's most recent rate proceeding;
b. Rate base or expense items the same in nature and kind as those allowed by a currently effective commission order in the public utility's most recent rate proceeding; and
c. No change in existing rate design.

3. In ordering an interim rate schedule, the commission may require a bond to secure any projected refund required by subsection 4. The terms of the bond, including the amount and surety, are subject to the commission's approval.
4. As ordered by the commission, the utility shall promptly refund to persons entitled thereto all interim rate amounts collected by the public utility in excess of the final rates approved by the commission plus reasonable interest at a rate to be determined by the commission.

49-05-07. Immunity from prosecution for self-incrimination.

No person subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in any investigation or inquiry by or hearing before the commission or any commissioner upon the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence. The provisions of this section shall not exempt any person from prosecution or punishment for perjury. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

49-05-08. Orders and decisions of commission - Conclusive.

In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

49-05-09. Decisions of commission - Rescission or amendment.

The commission, at any time, upon due notice to the public utility affected and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it. Any order rescinding, altering, or amending a prior order or decision, when served upon the public utility affected, shall have the same effect as an original order or decision.

49-05-10. Improper action taken by utility - Damages - Who may sue - Recovery.

In case any public utility shall do, cause to be done, or permit to be done, any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or shall omit to do any act, matter, or thing required to be done, either by the constitution, any law of this state, or any order or decision of the commission, such public utility shall be liable to the persons, corporations, or limited liability companies affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court shall find that the act or omission was willful, the court, in addition to the actual damages, shall award damages for the sake of example and by way of punishment. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation, limited liability company, or person. No recovery under this section in any manner shall affect a recovery by the state of the penalties provided in this title or the power to punish for contempt.

49-05-11. Orders issued by commission - Period remaining in force.

Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in such order or until revoked or modified by the commission, unless the same is suspended, modified, or revoked by order or decree of a court of competent jurisdiction.

49-05-12. Appeal from decision of commission.

Any party to any proceeding heard by the commission feeling aggrieved by the decision or by the entry of any final order of the commission therein may appeal therefrom to the district court in the manner prescribed in chapter 28-32.

49-05-13. Suspension of order on appeal only by order of court.

Repealed by omission from this code.

49-05-14. Stay on appeal - Suspending bond - Impounding excess charges.

In case the order or decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond first shall have been executed and filed with and approved by the district court, payable to the state of North Dakota, and sufficient in amount and security to ensure the prompt payment, by the party appealing, of all damages caused by the delay in the enforcement of the order or decision of the commission and of all the moneys which any person, corporation, or limited liability company may be compelled to pay, pending the appeal, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case said order or decision is sustained. The district court, in case it stays or suspends the order or decision of the commission in any matter affecting rates, also by order shall direct the public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation, limited liability company, or person in excess of the sum which such corporation, limited liability company, or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended. Upon a final determination of an appeal, the court shall make an appropriate order disposing of the impounded funds in accordance with such determination. In the event the public utility shall fail to comply with the conditions of the stay bond, the commission may sue thereon for the use and benefit of the patrons or others who have suffered damage by reason of the stay.

49-05-15. Appeals to supreme court.

The commission, the public utility, the complainant, or any other interested person, after the entry of judgment in the district court upon an appeal from the order of the commission, may prosecute an appeal to the supreme court of this state. Such appeal shall be taken as prescribed in chapter 28-32.

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 that intends to make a resource addition may file an application with the commission for an advance determination of prudence regarding the 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 a 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 resource addition;
    b. The public utility files with its application a fee in the amount of one hundred seventy-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 prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is prudent, shall consider the benefits of having the 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 a resource addition.
3. A resource addition approved by the commission is subject to 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 addition is binding for ratemaking purposes.
5. Following an initial commission order, the commission may, upon notice and hearing, if appropriate, in accordance with section 49-02-02 determine that continuation of a resource addition is no longer prudent or that its prior order should be modified. 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 reasonably incurred or obligated on a prudent resource addition, including accrued allowance for funds used during construction, even though the 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.
7. There is a rebuttable presumption that a resource addition located in the state is prudent.

49-05-17. Resource planning.

1. An integrated resource plan must include:
   a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
   b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
   a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.

b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.

5. An electric public utility shall report annually to the commission on emerging threats and efforts taken by the electric public utility to implement physical security and cybersecurity measures. The commission shall limit access to records and portions of a meeting relating to physical security and cybersecurity preparedness.

49-05-18. Planning reserve margin - Penalty.

The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

49-05-19. Reliable service obligation.

An electric public utility is responsible for ensuring reliable service. If an electric public utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fines, or provide a penalty. The commission shall adopt rules and establish guidelines for assessment of penalties, fines, or disallowances which must take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior outages, and good-faith attempts to ensure reliability.