

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1324

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1324

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1324**

House Industry, Business and Labor Committee

Conference Committee

Hearing Date **26 January 2005**

Tape Number	Side A	Side B	Meter #
2		X	0-24

Committee Clerk Signature



Minutes:

**Chairman Keiser opened the hearing of HB 1324.**

**Dennis Boyd, MDU Resources Group, Inc.**, introduced the bill. This bill was introduced at MDU's request. **(Testimony attached.)** He submitted a "hoghouse" amendment to the bill. This amendment is attached to his testimony.

**Rep. Ekstrom:** On page 2, line 6, would you be subject to annual reporting requirements? I assume those requirements will be detailed.

**Boyd:** There would be an annual report to the Commission.

**Rep. Forseth:** With this new amendment would eliminate a need for a fiscal note. The fiscal note was \$70,000.

**Boyd:** It was one of the concerns that was brought up by the commission when we met with them. We've included a statement that the "commission shall have the authority that the expenses associated with investigating application., be paid by the public utility in accordance with section 49.02.02." That is the public utility revolving fund. That should eliminate any need for a fiscal note.

**Rep. Dosch:** Because these things take years what happens if the project itself substantially changes?

**Boyd:** A protection for us and the fact that we gained pre approval of these expenses and a recognition that things can and do change is if it is determined that the project is not longer prudent or feasible, we would be allowed to collect all those expenses that we incurred up to that point. Any changes would be approved by the Public Service Commission not MDU. Rep.

Keiser: The rate making that gets established is binding if it is based on a 500 megawatt Vs 250.

**Boyd:** I'm a little concerned about the term "rate making." We're not asking for pre approval of rate making principles. If something did happen that the project changed we would still be able to recover the expenses that we incurred based on original pre approval.

**Rep. Kasper:** To clarify: What you are asking for is the approval in advance of the opportunity to go ahead, of the prudence of the expenditures or the prudence of the project? If according to the public service commissioner the project makes sense, go for it.

**Boyd:** Right, I think so. We would determine the need for the project and then go to the Public Service Commission to see if can be approved before we invest in the project.

**Illona Jeffcoat-Sacco, executive secretary to the Public Service Commission, testified that the Commission is neutral on HB 1324. (Testimony attached.)**

**Rep. Forseth:** As the bill is written, it's permissive. If you feel it isn't to the benefit of ND you could choose not to use provisions of it.

**Jeffcoat-Sacco:** In theory, yes. The prudence is a legal regulatory word of art. If the company applied and the commission decided against it because of the fact that it's not in ND, the company could challenge that in the court system. The traditional regulatory standards for prudence probably don't have any statement like instate development as part of the standard. That's not all written out here. That's a lot of body of regulatory law that isn't written in law anywhere. I think you have to put that in this bill to avoid cases being overturned on appeal.

**Chairman Keiser:** Aren't you really proposing a double standard? The PSC wants the authority to regulate and control and dictate rates to utilities regardless of where the power comes from. If production facility is in SD and that power flows in here, the commission wants the authority to say, "No, you can't do it, you have to bring your construction costs and you have to justify that rate." We are going to say if it's too high or low. Whether it's built out of state or not, you still want the authority to regulate.

**Jeffcoat-Sacco:** Whether it's built out of state or not, if a portion is allocated to ND, we have the authority to approve those rates today. The prudence is another step. Today whether it's built in or out of state we have the authority to determine the prudence. The only difference is whether in some cases or in all cases you tell us to determine the prudence earlier. Our commission is simply saying that if we determine earlier, it should be in ND.

**Chairman Keiser:** I understand. I'm also suggesting to you that ties the hands of a business making a prudent investment decision. We're interfering.

**Jeffcoat-Sacco:** Yes, you're correct But I see that regulation step as equal.

**Steve Schultz, Otter Tail Power,** testified "I don't know" on the bill. I believe we will be fine with the hoghouse amendments. I really appreciate, Mr. Chairman, you leading into what I really wanted to preach about. The request by the commission to say only ND projects in Ottertail Power's standpoint would be a bad thing. As many of you know we're looking at a sizable project in SD that would have rate affects to our customers in ND and MN. If you take the pre approval piece way from our project, 40% of Ottertail's customers now are denied the benefit. How much that would save or cost them, I don't know. It would seem to me we are being penalized for making a business decision what makes the best sense. We are very concerned about the "ND only." Otherwise from a first blush we would support this bill.

**Chairman Keiser:** Ms. Jeffcoat-Sacco, we would appreciate you drafting the amendment so we could have that.

**Rep. Thorpe:** You mentioned energy producing projects in SD. How did ND miss out that?

**Schultz:** The way it ended up being looked at in SD is when Bigstone One was built in SD it was built with the idea of there being a second unit there. There were a number of infrastructure type works that were begun.

**Rep. Kasper:** Clarify where you were at on the bill before the hoghouse amendment. I'm shocked that some of the rest of the industry didn't get up and support the bill as it makes a lot of sense to me. Were you in support of the bill as it was written? Now you want to double check the amendment?

Page 5

House Industry, Business and Labor Committee

Bill/Resolution Number **HB1324**

Hearing Date **26 Jan 05**

Schultz: Yes, we were supporting the previous bill.

**Chairman Keiser closed the hearing on HB 1324.**

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1324**

House Industry, Business and Labor Committee

Conference Committee

Hearing Date **26 January 2005**

Tape Number	Side A	Side B	Meter #
3	X		572 - 839

Committee Clerk Signature



Minutes:

**Chairman Keiser opened discussion of HB 1324.** He said that was the hog house amendment. He said he visited with Rep. Kasper and asked if he supported the hog house. Rep. Kasper said he didn't have any problems with it. He asked the wishes of the Committee. If the Committee feels comfortable, we can pass it out. If he comes back with a problem, we'll just get the bill back.

**Rep. Ekstrom:** I don't see any reason why this project should be developed in ND.

**Rep. Keiser:** All right. They were going to offer that amendment. If the committee wants to proceed with this the first action will be to adopt the hog house amendment.

**Rep. Kasper:** I so move.

**Rep. Nottestad:** I second

**A voice vote was taken. The motion carried.**

**Rep. Keiser:** The amendment is on the bill what would the Committee like to do?



**Rep. Ruby: I move a Do Pass as Amended.**

**Rep. Vigasaa: I second**

**Rep. Keiser:** This is one of the best pro business things I've seen come before this committee. Occasionally the state does things backwards but with this one we were right at the top of the class in terms of doing it backwards. You make people go through hundreds of thousands of dollars of expenditures and then come in and have them say no. It's a lot better just to say here's our concept if you like it or not and then we're gonna go forward. I believe this is the right thing.

**Rep. Ekstrom:** One question. If we have gotten all the way down to brass tax and the PSC says eh eh.

**Rep. Keiser:** It has happened and then had to go back and retool and have to do a bunch of things. This should be doing it at the front end.

**Rep. Kasper:** Who would be responsible to get the bill redrafted?

**Rep. Keiser:** Our clerk will take up the amendment to get it refined and then we'll go from there.

**A roll call vote was taken.**

**Yes: 14 No: 0 Absent: 0 The bill passed as amended.**

**Rep. Kasper will carry the bill.**

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/28/2005

Amendment to: HB 1324

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

We estimate the engrossed bill causes no fiscal impact

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No revenue impact is expected from this bill.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

We estimate no substantial expenditures under the engrossed bill.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

We have not estimated any need for an additional appropriation because we would expect to employ such outside experts under our existing appropriation. However, it is possible that if operating expenses are tight, we will need to obtain Emergency Commission approval for these expenditures, and a corresponding increase to our appropriation to cover the cost.

**Name:** Illona Jeffcoat-Sacco  
**Phone Number:** 701-328-2400

**Agency:** PSC  
**Date Prepared:** 01/28/2005

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/12/2005

Bill/Resolution No.: HB 1324

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$70,000	\$0	\$70,000	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The only aspect of the bill which could cause fiscal impact is the need to process any case and all issues raised by the applicataion within the prescribed time frames. It is likely that under some circumstances this would require hiring outside assistance. We estimate that this might cost about \$35,000 for one filing, and we estimate one filing requiring this outside assistance per year, or two per biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No revenue impact is expected from this bill.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

We estimatned expenditures because it is likely that under some circumstances this bill would require hiring outside assistance, in order to process the filings within the required time frame, especially if cost of capital is involved in the application. We have no cost of capital expert on staff. We estimate that hiring a consultant for this purpose might cost about \$35,000 for one filing, and we estimate one filing requiring this outside assistance per year, or two per biennium. Consequently, the expenditure number is \$70,000 per biennium. The expenditures would be general fund expenditures because the bill does not provide for use of the Valuation Fund for these filings.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

We have not estimated any need for an additonal appropriation because we would expect to employ such outside experts under our existng appropriation. However, it is possible that if operating expenses are tight, we will need to obtain Emergency Commission approval for these expenditures, and a corresponding increase to our appropriation

to cover the cost.

**Name:** Illona Jeffcoat-Sacco  
**Phone Number:** 701-328-2407

**Agency:** PSC  
**Date Prepared:** 01/23/2005

January 26, 2005

VR  
1/27/05  
1 of 2

HOUSE AMENDMENTS TO HOUSE BILL NO. 1324 IBL 1-27-05

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to advance determination of prudence for a public utility's proposed new construction, lease, or improvement of an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract.

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

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

**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 expenses associated with investigating the application made by the public utility for prudence of a resource addition be 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 applies for a prudence determination before commencement of construction or purchase of an electric resource addition;
  - b. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition;
  - 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.
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. Before commercial operation of the resource addition, the public utility shall make a general rate case filing with a full cost of service analysis including the resource addition in accordance with section 49-05-05. 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

2002

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."

Renumber accordingly

Roll Call Vote #: ~~13~~ Date: 1-26-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1324

House **INDUSTRY, BUSINESS AND LABOR** Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Adopt Amendments*

Motion Made By *Kasper* Seconded By *Nottestad*

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigesaa					

Total (Yes) *14* No *0*

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Roll Call Vote #: 2 Date: 1-26-05

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1324**

House **INDUSTRY, BUSINESS AND LABOR** Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Rep Ruby Seconded By Rep. Vigesaa

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 14 No 0

Absent -0-

Floor Assignment Kasper

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1324: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1324 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to advance determination of prudence for a public utility's proposed new construction, lease, or improvement of an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract.

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

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

**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 expenses associated with investigating the application made by the public utility for prudence of a resource addition be 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 applies for a prudence determination before commencement of construction or purchase of an electric resource addition;
  - b. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition;
  - 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.
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. Before commercial operation of the resource addition, the public utility shall make a general rate case filing with a full cost of service analysis including the resource addition in accordance with section 49-05-05. 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."

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1324

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1324

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 03-02-05

Tape Number	Side A	Side B	Meter #
1		xxx	900-1930

Committee Clerk Signature

*Jana Van Berkom*

Minutes: **Chairman Mutch** opened the hearing on HB 1324. All Senators were present.

**HB 1324** relates to advance determination of prudence for a public utility's proposed new construction, lease, or improvement of an energy conversion facility.

**Dennis Boyd**, Montana Dakota Utilities, introduced the bill. See written testimony.

**Senator Klein:** Do the consumers save as well?

**Boyd:** That's correct. Any way that we can save cost in a constructional plan is going to eventually transfer down to lower cost for the consumer.

**Chairman Mutch:** Is this proposal unique to North Dakota?

**Boyd:** I can't answer that.

**Senator Espgaard:** This doesn't allow the cost of the plant to be put onto the bill early, it just allows the determination to be made as feasible product.

**Boyd:** This has nothing to do with covering the cost during the construction faze of the plan.

**Sen. O'Connell** stated his support for the bill.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1324

Hearing Date 3-02-05

**Bob Graveline**, Utility Shareholders of North Dakota, stated his support for the bill.

**The hearing was closed. No action was taken.**

**On the 8th of March, the committee met to make a recommendation on this bill.**

**Senator Espegard moved a DO PASS AS AMENDED.**

**Senator Klein seconded.**

**Roll Call Vote: 5 yes. 0 no. 2 absent.**

**Carrier: Chairman Mutch**

March 8, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1324

Page 2, after line 19, insert:

- "6. This section only applies if the energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased is in North ~~Dakota.~~ *this state*  
*located*

Renumber accordingly

Date: 3-8-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

Senate Industry, Business, and Labor

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments

Motion Made By Klein

Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	A	
Senator Klein	X		Senator Heitkamp	A	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 5 No 0

Absent 2

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3-8-05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

Senate **Industry, Business, and Labor**

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DPAM

Motion Made By Espegard

Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	A	
Senator Klein	X		Senator Heitkamp	A	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 5 No 0

Absent 2

Floor Assignment Mutch

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1324, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1324 was placed on the Sixth order on the calendar.**

Page 2, after line 19, insert:

- "6. This section applies only if the energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased is located in this state."

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1324

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1324

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 4-6-05

Tape Number

1

Side A

Side B

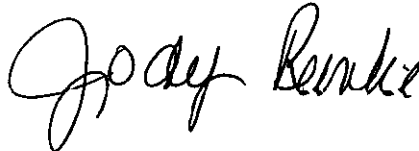
x

Meter #

7.9-8.5

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Committee Clerk Signature



Minutes:

**Chairman Kasper:** Opened the conference committee on HB 1324.

Chairman Kasper, Representative Ruby, Representative Boe, Chairman Mutch, Senator Nething, Senator Heitkamp were present.

**Chairman Kasper:** Let me share with you a word that I just received, it appears that the people involved, the governors office and the PSC are working a on some type of a compromise amendment that they would like to propose to this committee, but as we sit here they do not have that amendment prepared and they asked if they would adjourn our meeting and reschedule it for tomorrow? Meeting adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1324

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 4-12-05

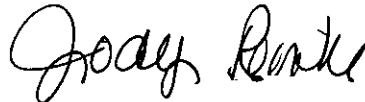
Tape Number  
1

Side A  
x

Side B

Meter #  
12.8-34.8

Committee Clerk Signature



Minutes:

**Chairman Kasper:** Opened the conference committee on HB 1324.

Chairman Kasper, Representative Ruby, Representative Boe, Chairman Mutch, Senator Nething, Senator Heitkamp were present.

**Chairman Kasper:** OK committee, the parties of this bill are working on some type of a compromise which they now claim they have done so.

**Dennis Boyd, Resources Group, MDU:** Appeared in support of the amendments, and stated that this bill was introduced at our request, and I want to thank the committee and the chairman to take some testimony, as you correctly indicated, the 3 investor owned utilities companies, the Governors office, PSC office have come to an agreement of some additional amendments that we would ask you to put on this bill.

**Dan Kuntz, Attorney, MDU:** Appeared in support of the amendments, the purpose of HB 1324 was to allow public utilities to come to the commission and get pre approval for prudence and

reasonableness of construction projects, leases and so forth, the purpose for that pre approval was to give the utilities some assurance that they were going to be able to recover the cost of those projects and rates at some future point. The Senate amendments would have restricted the ability of the commission to consider those pre approval applications and facilities built in North Dakota the amendments that you have before you do a couple different things, the first is on line 18 and 19 would currently provide the utility must apply for before entering into a purchase contract or before construction of the facility starts, the amendments would remove that requirement because of power purchase contracts. leases, and so forth that is really not practical the PSC proceedings will take 6-7 months in all likely hood, some of these things are going to require quicker action to that. If the company waits to long after it starts construction the only risk is on itself, that it may not get prudency determination. the amendment on page 2 line 2, will allow the commission to consider reviewing prudence application facility be located in North Dakota, the benefits of having the facility located in North Dakota what that would do is the facility that is located in North Dakota if someone were going to argue that it might be more beneficial to locate that facility out side the state, that the commission could none the less consider the benefits of having the facility located in North Dakota and there by determine that even though there might be a cheaper alternative located out side the state, when you consider the benefits of having it located in the state, the project is none the less prudent and reasonable. It would provide the companies to build in North Dakota but not penalize utilities for having facilities located outside the state. They would have to stand under their own weight in terms of prudence without the benefits of being able to consider what would otherwise apply to facilities located in North Dakota. the amendments were suggesting remove the requirement of 8, 9, 10,

that would require the utility to file a rate case before commercial operation of the facility, in essence this requirement would of always forced utility to file for a rate case before it could put the facility into place smaller projects, purchase contracts, there really would be no reason you would be forcing utility to file that it may not need at that particular point, we suggest removing that requirement, the utility would be able to file for a rate increase whenever it felt necessary under present law, and then finally, the Senate amendment to HB 1324, put a requirement on that these applications could only be made for facilities located in North Dakota, the proposed amendments would not limit it, the pre approval application to just facilities in North Dakota, but instead allow facilities in North Dakota to be entitled to a rebuttable presumption of prudence.

**Senator Heitkamp:** Other states are allowing this?

**Dan Kuntz:** I'm not sure what other states are doing in this regard.

**Chairman Kasper:** Give us an overview of why we need these amendments to this bill?

**Dan Kuntz:** The bill itself and why we need to bill, is for utilities to come to the commission have the commission involved in that decision making that will give the utility some comfort level, that what they are doing, they will not be second guessed, it may even help with their financing. These amendments provides a little bit of a plus if you will for the North Dakota facilities, the commission considers employment benefits, tax benefits, and so forth in weighing this particular alternative being built in North Dakota verses a facility outside the state. This will just make the process smoother for those facilities which they aren't really controversial.

**Kevin Cramer, Public Service Commission:** Appeared in support of the bill. I want to express my appreciation to these folks, what we have come up with is a good of a product as we can hope for. The commission has not taken a position on the amendments, although all three of us have

Page 4

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1324

Hearing Date 4-12-05

talk about them, and this is a very good compromise, however it provides that regulatory certainty that the utilities need to go to the market to get a better rating, to lower financing, and that certainty is beneficial not only for investors, the companies, the state of North Dakota, but also for the rate payers. I'm very pleased with the product that has turned out.

**Ron Rasenberger, Governors Office:** Appeared in support of amendments and appreciate all the work that has taken place on this bill.

**Kathy Aas, Excel Energy:** We are also in support of the amendments.

**John Olson, Otter Tail Power Company:** We are also in support of the amendments.

**Senator Mutch:** I move that the **SENATE RECEDE** from the **SENATE** amendments and **ADOPT** the amendments as presented.

**Senator Nething:** I **SECOND** the motion.

Motion carried **VOTE: 6-YES 0-NO 0-ABSENT**

**Representative Kasper will carry the bill on the floor.**

**Conference Committee Amendments to Engrossed HB 1324 (58271.0202) - 04/12/2005**

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1324 be amended as follows:

Page 1, remove lines 18 and 19

Page 1, line 20, replace "b." with "a."

Page 1, line 22, replace "c." with "b."

**Conference Committee Amendments to Engrossed HB 1324 (58271.0202) - 04/12/2005**

Page 2, line 1, replace "d." with "c."

Page 2, line 2, after the period insert "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."

Page 2, line 8, remove "Before commercial operation of the resource addition, the public utility shall make"

Page 2, remove line 9

Page 2, line 10, remove "addition in accordance with section 49-05-05."

Page 2, after line 19, insert:

- "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."

Renumber accordingly



1st  
Adopt amendments

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number 1324 (, as (re)engrossed): Date: 4-12-05

Your Conference Committee: IBL.

For the Senate: YES / NO For the House: YES / NO

Chairman Mutch P  
Senator Netting P  
Senator Heitkamp P

Chairman Kasper P  
Rep. Ruby P  
Rep. Boe P

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 756 --

and place on the Seventh order.

1, adopt (further) amendments as follows, and place on the Seventh order: amendments MDU

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) was placed on the Seventh order of business on the calendar.

DATE: 4-12-05  
CARRIER:

LC NO. of amendment

LC NO. of engrossment

Emergency clause added or deleted  
Statement of purpose of amendment

MOTION MADE BY: Heitkamp

SECONDED BY: Mutch

VOTE COUNT 16 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number 1324 (, as (re)engrossed):

Date: 4-12-05

Your Conference Committee: IRL

For the Senate:

For the House:

	YES / NO		YES / NO
Chairman Mutch P.	Y	Chairman Kasper	Y
Senator Nething P.	Y	Rep. Ruby	Y
Senator Heitkamp P.	Y	Rep. Boe	Y

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from)

the (Senate/House) amendments on (SJ/HJ) page(s) 756 -- \_\_\_\_\_

\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

, adopt (further) amendments as follows, and place 1324 on the Seventh order:

\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1324 was placed on the Seventh order of business on the calendar.

DATE: 4-12-05  
CARRIER: Representative Kasper

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted  
Statement of purpose of amendment

MOTION MADE BY: Senator Mutch

SECONDED BY: Senator Nething

VOTE COUNT 6 YES — NO — ABSENT

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number 1324 (, as (re)engrossed):

Date: 4-12-05

Your Conference Committee: TBL.

For the Senate:

For the House:

	YES / NO		YES / NO
Chairman Mutch	<u>X</u>	Chairman Kasper	<u>X</u>
Senator Nething	<u>X</u>	Rep. Ruby	<u>X</u>
Senator Heitkamp	<u>X</u>	Rep. Boe	<u>X</u>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1001 -- \_\_\_\_\_

\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1324 was placed on the Seventh order of business on the calendar.

DATE:  
CARRIER:

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted  
Statement of purpose of amendment

MOTION MADE BY: Mutch

SECONDED BY: Nething

VOTE COUNT 6 YES 0 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1324, as engrossed:** Your conference committee (Sens. Mutch, Nething, Heitkamp and Reps. Kasper, Ruby, Boe) recommends that the **SENATE RECEDE** from the House amendments on HJ page 1001, adopt amendments as follows, and place HB 1324 on the Seventh order:

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1324 be amended as follows:

Page 1, remove lines 18 and 19

Page 1, line 20, replace "b." with "a."

Page 1, line 22, replace "c." with "b."

Page 2, line 1, replace "d." with "c."

Page 2, line 2, after the period insert "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."

Page 2, line 8, remove "Before commercial operation of the resource addition, the public utility shall make"

Page 2, remove line 9

Page 2, line 10, remove "addition in accordance with section 49-05-05."

Page 2, after line 19, insert:

"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."

Re-number accordingly

Engrossed HB 1324 was placed on the Seventh order of business on the calendar.

**2005 TESTIMONY**

HB 1324

**Testimony on HB 1324**  
**Dennis Boyd**  
**MDU Resources Group, Inc.**  
**January 26, 2005**

Good morning, Mr. Chairman and members of the committee. My name is Dennis Boyd. I am with MDU Resources Group, and appearing this morning in support of HB1324. This bill was drafted and introduced at the request of Montana-Dakota Utilities and started out with a simple concept. That concept is to obtain from the North Dakota Public Service Commission a pre-approval or predetermination of the prudence of expenditures for the construction of generation and transmission facilities before construction begins and the ratemaking principles which will be utilized when those facilities are completed and added to the rate base of the company. What started out as a simple concept, has become rather convoluted and in a sense, humorous. Before I explain, let me begin by explaining how the current process works when a regulated company determines it needs to build a generating plant or transmission facility.

Currently and in very general terms, after a company has determined it needs additional generation or transmission facilities AND after it has obtained all of the various permits needed – air quality permits, water permits, siting permits, etc. etc. , it proceeds to build the facility. Usually those facilities take several years to complete and expenses run into the hundreds of millions of dollars. After the facility is completed, the utility then files a rate case with the PSC to recover the costs. After the PSC determines the facility was needed and the expenditures were prudent, the costs are then added to the utilities rate base and rates are adjusted accordingly. When the Coyote plant at Beulah was built in the early 1980's, the costs ran about \$1million per megawatt. Coyote is a 400 megawatt plant and the cost was about \$400 million. Today those costs are even higher.

HB1324 seeks to place the approval of the prudence of the expenditures at the front end of the process, rather than at the end of the process. We are seeking advance determination of the prudence because there is always the risk that the Commission might determine after the expenses have been incurred that there might have been a better option. That makes investors nervous and could lead to higher costs for the consumer.

I said earlier this has become somewhat convoluted and humorous. During the development of the concept of HB1324, we had been in contact with the PSC staff and I had at least one conversation with one of the PSC Commissioners. In response to suggestions from them, the bill you have before you was developed. Confident we would not meet with Commission resistance, I recruited bill sponsors and the bill was dropped into the House hopper. Shortly thereafter, I was informed the PSC would like us to meet with them to explain the bill, which we were happy to do. After meeting with the Commission for an hour and in a further effort to address their concerns, we decided the bill needed extensive amending and the easiest way to accomplish that was to re-write the entire bill.

If there is anything humorous about this entire process, it the fact I am now offering a HOGHOUSE AMENDMENT to my own bill. Usually hoghouse amendments are something you do to somebody else, not to yourself. HAND OUT AMENDMENTS.

Mr. Chairman and members of the Committee, the hoghouse amendment you have before you would create a new bill. All references to ratemaking principles contained in HB1324 have been eliminated, and what remains is simply the authority for the Public Service Commission to issue a pre-approval or predetermination of the prudence of expenditures for new construction, leases or improvements to existing facilities, renewable energy facilities, transmission facilities, or energy purchase contracts AND to establish a process.

Section 1 of the amendment allows the utility to file an application with the PSC for an advance determination of the prudence regarding the proposal (line 13). It then allows the PSC to utilize NDCC section 49-02-02 to bill the utility for the expenses associated with the prudence determination.

Subsection 1 sets forth the procedure and parameters of the request. In Subsection a, the utility files an application for predetermination. Subsection b requires the utility to include with the filing a projection of the costs to the date of commercial operation of the project. Subsection c authorizes the Commission to provide notice and to hold a public hearing, if appropriate. Subsection d authorizes the Commission to predetermine the reasonableness and prudence of the proposal.

Subsection 2 (line 3, page 2) requires the Commission to issue its determination no later than 7 months after the application.

Subsection 3 (line 6, page 2) requires the utility to file an annual report until the project is ready for commercial operation.

Subsection 4 (line 8, page 2) requires the utility to file a general rate case prior to commercial operation of the project which shall include a full cost of service analysis, BUT the Commission's order determining prudence shall be binding for ratemaking purposes.

And finally Subsection 5 (line 13, page 2) allows the PSC to change their predetermination, if AFTER HEARING, the PSC determines the project is no longer prudent. HOWEVER, IF THE PSC REVERSES ITS INITIAL ORDER, the utility is allowed to recover in its rates all of the expenses incurred up to the time the order is reversed.

That is the bill, Mr. Chairman and members of the committee. It still is a fairly simple concept – approve the prudence of the expenses before they are incurred, not afterward. We have worked hard to placate the Public Service Commission's concerns; there are safeguards in the bill for the consumer, for the company, and for the Public Service Commission. We believe passage of this bill will allow us to remove investor uncertainty on projects which cost hundreds of millions of dollars and perhaps allow us to borrow money at a lower interest rate, which in turn, translates into reduced cost for the consumer.

1 A BILL for an Act to create and enact a new section to chapter 49-05 of the North  
2 Dakota Century Code, relating to advance determination of prudence for a public utility's  
3 proposed new construction, lease or improvement of an energy conversion facility,  
4 renewable energy facility, 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  
7 is created and enacted as follows:

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

- 17 1. The Commission may issue an order approving the prudence of an electric  
18 resource addition if:
- 19 a. The public utility applies for a prudence determination prior to  
20 commencement of construction or purchase of an electric resource  
21 addition;
  - 22 b. The public utility files with its application a projection of costs to the date  
23 of the anticipated commercial operation of the electric resource addition;
  - 24 c. The commission provides notice and holds a hearing, if appropriate, in  
25 accordance with the provisions of section 49-02-02 of the North Dakota  
26 Century Code and



- 1           d. The commission determines that the resource addition is reasonable and  
2           prudent.
- 3           2. The commission order shall be rendered no later than seven months after the  
4           public utility files its application requesting a prudence determination of an  
5           electric resource addition.
- 6           3. Any resource addition approved by the commission is subject to annual  
7           reporting requirements until commercial operation of the resource addition.
- 8           4. Prior to commercial operation of the resource addition, the public utility shall  
9           make a general rate case filing with a full cost of service analysis including  
10          the resource addition in accordance with section 49-05-05 of the North  
11          Dakota Century Code. The commission's order determining prudence of the  
12          resource adjustment shall be binding for ratemaking purposes.
- 13          5. If at any time following an initial commission order, the commission following  
14          a subsequent hearing determines that continuation of a project is no longer  
15          prudent or that its prior order should be modified, the public utility shall be  
16          allowed to recover in its rates, and in a timely manner consistent with the  
17          public utility's financial obligations, the amounts the public utility already has  
18          expensed, incurred or obligated on a project, including interest expense and  
19          a return on equity invested in the project up to the time the new order is  
20          entered even though the project may never be fully operational or used by the  
21          public utility to serve its customers.

## **H. B. 1324**

**Presented by: Illona A. Jeffcoat-Sacco  
Executive Secretary  
Director, Public Utilities Division  
Public Service Commission**

**Before: House Industry, Business and Labor  
Honorable George J. Keiser, Chairman**

**Date: 26 January 2005**

### **TESTIMONY**

Mr. Chairman and committee members, my name is Illona Jeffcoat-Sacco. I am Executive Secretary of the Public Service Commission and Director of the Public Utilities Division. The Public Utilities Division implements the Commission's jurisdiction over telecommunications, gas and electric utilities. The Commission asked me to appear here today to testify on HB 1324. The Commission is neutral on HB 1324.

However, the Commission strongly recommends that the benefits conveyed to the investing utility by HB 1324 should only be realized if the investment that is the subject of the pre-approval is an investment in North Dakota.

Under traditional regulatory concepts, the prudence of a utility's investment is determined when that utility seeks to recover the cost of that investment in rates, which is when the investment becomes used and useful to ratepayers, or in other words, when the plant is up and running. This process has worked well here and across the country

for decades. This process can continue to work well in the future and is in no need of change.

Under HB 1324, a utility could ask the Commission to determine the prudence of an investment earlier in the process, when the investment was in the planning stages, thereby providing the utility with an additional measure of comfort as it proceeds with its investment. We can see why utilities would want this pre-approval, but we strongly believe such a benefit should not be loosely granted. Simply, the added measure of comfort provided by HB 1324 should not be available to a utility for an investment outside North Dakota. The benefit should be reserved only for North Dakota investments.

The type of process envisioned in this bill is an incentive for shareholders to develop generation. One state that we are aware of that has created a process somewhat like this is Iowa. But in Iowa they have very specifically targeted this incentive to only Iowa projects. In fact, the Governor of Iowa recently touted the incentive in his state of the state speech as a major reason six new facilities are locating there. South Dakota is aggressively targeting incentives to power development this year as well. And the state of Minnesota has never been shy about encouraging in-state power source development. We are concerned that if every state in our region is targeting incentives, but North Dakota is not, other states will use that fact to lure away projects that would otherwise be feasible here.

We would be happy to prepare a proposed amendment to implement this recommendation.

This completes my testimony. I will be happy to answer any questions you may have.

**Testimony on HB 1324**  
**Dennis Boyd**  
**MDU Resources Group, Inc.**  
**March 2, 2005**

Good morning, Mr. Chairman and members of the committee. My name is Dennis Boyd. I am with MDU Resources Group, and appearing this morning in support of HB1324. This bill was drafted and introduced at the request of Montana-Dakota Utilities and started out with a simple concept. That concept is to obtain from the North Dakota Public Service Commission a pre-approval or predetermination of the prudence of expenditures for the construction of generation and transmission facilities before construction begins and the ratemaking principles which will be utilized when those facilities are completed and added to the rate base of the company. What started out as a simple concept, has become rather convoluted and in a sense, humorous. Before I explain, let me begin by explaining how the current process works when a regulated company determines it needs to build a generating plant or a transmission facility.

Currently and in very general terms, after a company has determined it needs additional generation or transmission facilities AND after it has obtained all of the various permits needed – air quality permits, water permits, siting permits, etc. etc., it proceeds to build the facility. Usually those facilities take several years to complete and expenses run into the hundreds of millions of dollars. After the facility is completed, the utility then files a rate case with the PSC to recover the costs. After the PSC determines the facility was needed and the expenditures were prudent, the costs are then added to the utility's rate base and rates are adjusted accordingly. When the Coyote plant at Beulah was built in the early 1980's, the costs ran about \$1 million per megawatt. Coyote is a 400 megawatt plant and the cost was about \$400 million. Today those costs are even higher – almost double.

HB1324 seeks to place the approval of the prudence of the expenditures at the front end of the process, rather than at the end of the process. We are seeking advance determination of the prudence because there is always the risk that the Commission might determine after the expenses have been incurred that there might have been a better option. That makes investors nervous and could lead to higher costs.

I said earlier this has become somewhat convoluted and humorous. During the development of the concept of HB1324, we had been in contact with the PSC staff and I had at least one conversation with one of the Commissioners. In response to suggestions from them, the bill was developed. Confident we would not meet with Commission resistance, I recruited bill sponsors and the bill was dropped into the House hopper. Shortly thereafter, I was informed the PSC would like us to meet with them to explain the bill, which we were happy to do. After meeting with the Commission for an hour and in a further effort to address their concerns, we decided the bill needed extensive amending and the easiest way to accomplish that was to re-write the entire bill.

If there is anything humorous about this entire process on the House side, it is the fact I ended up offering a HOGHOUSE AMENDMENT to my own bill. Usually hoghouse amendments are something you do to somebody else, not to yourself. Those amendments were accepted by the House, and the result is the bill you have before you this morning. Very simply, the bill gives the authority to the Public Service Commission to issue a pre-approval or predetermination of the prudence of expenditures for new construction, leases or improvements to existing facilities, renewable energy facilities, transmission facilities, or energy purchase contracts AND to establish a process. It puts the approval process at the beginning of construction.

Section 1 of the amendment allows the utility to file an application with the PSC for an advance determination of the prudence regarding the proposal (line 13). It then allows the PSC to utilize NDCC section 49-02-02 to bill the utility for the expenses associated with the prudency determination.

Subsection 1 sets forth the procedure and parameters of the request. In Subsection a, the utility files an application for predetermination. Subsection b requires the utility to include with the filing a projection of the costs to the date of commercial operation of the project. Subsection c authorizes the Commission to provide notice and to hold a public hearing, if appropriate. Subsection d authorizes the Commission to predetermine the reasonableness and prudency of the proposal.

Subsection 2 (line 3, page 2) requires the Commission to issue its determination no later than 7 months after the application.

Subsection 3 (line 6, page 2) requires the utility to file an annual report until the project is ready for commercial operation.

Subsection 4 (line 8, page 2) requires the utility to file a general rate case prior to commercial operation of the project which shall include a full cost of service analysis, BUT the Commission's order determining prudence shall be binding for ratemaking purposes.

And finally Subsection 5 (line 13, page 2) allows the PSC to change their predetermination, if AFTER HEARING, the PSC determines the project is no longer prudent. HOWEVER, IF THE PSC REVERSES ITS INITIAL ORDER, the utility is allowed to recover in its rates all of the expenses incurred up to the time the order is reversed.

That is the bill, Mr. Chairman and members of the committee. It still is a fairly simple concept – approve the prudence of the expenses before they are incurred, not afterward. We have worked hard to placate the Public Service Commission's concerns; there are safeguards in the bill for the consumer, for the company, and for the Public Service Commission. We believe passage of this bill will allow us to remove investor uncertainty on projects which cost hundreds of millions of dollars and perhaps allow us to borrow money at a lower interest rate, which in turn, translates into reduced costs for everyone.

Within the past several days, additional concerns have been raised by the Public Service Commission. We have been meeting with Commissioners and their staff in an effort to address those concerns. Consequently, I would ask that your committee not take any action on this bill today to see if we can resolve their concerns.

That concludes my testimony. I would be happy to answer any questions.



**Public Service Commission**  
State of North Dakota

COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

8 March 2005

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
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Honorable Duane Mutch, Chairman  
Senate Industry, Business and Labor  
600 E. Boulevard Avenue  
Bismarck, ND 58505

Re: Proposed Amendment to Engrossed H.B. 1324

Dear Senator Mutch:

The Commission is neutral on HB 1324. However, the Commission strongly recommends that the benefits conveyed to the investing utility by HB 1324 should only be realized if the investment that is the subject of the pre-approval is an investment in North Dakota. A proposed amendment to accomplish this is attached.

The type of process envisioned in this bill is an incentive for shareholders to develop generation, and a protection for shareholders against some of the risk associated with doing so. One state that has created a process somewhat like this is Iowa, but Iowa has very specifically targeted this incentive to only Iowa projects. A similar focus for the North Dakota bill is appropriate. The added measure of comfort provided to the utility by HB 1324 should not be available to a utility for an investment outside North Dakota, but should be reserved only for North Dakota investments.

Thank you for the opportunity to provide this information and the proposed amendment. If you have any questions, please do not hesitate to call or e-mail.

Sincerely,

Illona A. Jeffcoat-Sacco  
Executive Secretary  
Director, Public Utilities Commission

Enclosure

cc: Senator Jerry Klein, Vice Chair  
Senator Karen K. Krebsbach  
Senator April Fairfield

Senator Duaine C. Espegard  
Senator Dave Nething  
Senator Joel C. Heitkamp

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1324

Page 2, after line 19, insert:

- "6. This section only applies if the energy conversion facility, renewable energy facility, transmission facility or facility generating the energy to be purchased is in North Dakota."

Renumber accordingly



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1324

Page 1, remove lines 18 and 19

Page 2, line 2, after the period insert "For facilities located or to be located in North Dakota, 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, renewable energy facility, transmission facility, or facility generating the energy to be purchased located in North Dakota."

Page 2, remove lines 8 and 9

Page 2, line 10, remove "addition in accordance with section 49-05-05."

Page 2, after line 19, insert:

"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

411-05

Prepared by Dan Kuntz for  
Montana-Dakota Utilities Co.

**Summary Explanation of Proposed Amendments to First Engrossed HB 1324  
with Senate Amendments**

**Background**

Engrossed HB 1324 with the Senate Amendments would allow public utilities to apply to the Public Service Commission for an advanced determination of whether a power purchase contract, or the construction or lease of a generating facility or transmission line, will be deemed prudent by the Commission. The determination that a project is prudent gives a utility some assurance that it will be allowed to recover the costs of the project in its future rates.

**Proposed Amendments**

The proposed amendments would remove a requirement at lines 18 and 19 of Engrossed HB 1324 that the utility must apply for a prudence determination before entering into a power purchase contract or before construction of a facility commences. For power purchase contracts, leases, and small construction projects this may not be practical because the Public Service Commission proceeding may last six to seven months.

The proposed amendment to page 2, line 2 of Engrossed HB 1324, would allow the Commission, in reviewing prudence applications for facilities located in North Dakota, to consider the benefits of having the facility located in North Dakota. For example, with this amendment, a facility located in North Dakota that might be somewhat more expensive than an alternative facility located outside the state, could

nonetheless be determined to be prudent. This should provide an incentive to locate facilities in North Dakota without penalizing utilities for facilities located outside the State.

The proposed amendments would remove the requirement at lines 8, 9 and 10 of Engrossed HB 1324 that the utility must file a rate case before commercial operation of a facility. This requirement would force a utility to file for a rate change even for relatively small projects or purchase contracts.

The current language of subsection 6 of Engrossed HB 1324 would allow the Commission to consider prudence applications only for facilities located in North Dakota. The proposed amendment to page 2, lines 20 through 22, would allow for prudence applications for a facility regardless of its location. Facilities located in North Dakota, however, would be entitled to a rebuttable presumption that they are prudent. This should provide a further incentive to locate facilities in North Dakota without penalizing facilities located outside the state.