

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2278

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2278

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2278

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-02-05

Tape Number	Side A	Side B	Meter #
1	xxx		100-1200
Committee Clerk Signature <i>Lisa Van Berkom</i>			

Minutes: **Chairman Mutch** opened the hearing on SB 2278. All Senators were present.

SB 2278 relates to public utility rate stability plans.

Steve Schultz, Otter Tail Power Company, introduced the bill.

See written testimony.

Senator Klein : What other times would you be looking at times to spread this cost?

Steve: The other most significant cost would be a new transmission line.

Senator Nething : What the current situation and what's the problem with it?

Steve: The current situation, is if we build a new plant, which is probably the best example, and the plant takes you four years to build, the fifth year becomes commercial. Normally, the costs are accrued and then a rate case is held on the fifth year and you get the rate increase all at one time. So this option will allow it to step in the cost before it becomes commercial. Our studies show that the savings to the customer is about a three percent less rate increase.

Senator Espgaard : Would this include construction done in other states besides North Dakota?

Steve: Yes.

Senator Nething : Which year would the rates kick in the rates?

Steve: My understanding would be the second year of construction.

Senator Nething : If I'm a rate payer at the second year but I move out before the construction project is done in the fourth year, I'm paying toward that project, even though I don't see any benefit from it?

Steve: Yes.

Senator Nething : But for those up us that see the benefit, then the rates, would actually be about three percent less increase?

Steve: Correct.

Senator Klein : This is under the PSC?

Steve: Yes. There would be an original application with cost analysis.

Senator Heitkamp : How do we control what other state PSC's do?

Steve: Not the same under the PSC, but it would apply in other states if we were going to South Dakota.

Dennis Boyd, MDU Resources Group, INC., and utility division, stated his support for the bill.

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

Kathy Aas, Xcel Energy, stated support for the bill.

There was no opposition.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2278

Hearing Date 2-01-05

Senator Klein moved to adopt amendments proposed by Steve Schultz.

Senator Nething seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Senator Klein moved a DO PASS AS AMENDED.

Senator Espegard seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Klein .

FISCAL NOTE

Requested by Legislative Council
02/09/2005

Amendment to: SB 2278

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
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$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 engrossed bill allows the use of the Valuation Fund for cases brought under this bill. There would be no fiscal impact under this bill different from potential fiscal impact of any rate proceeding under current law and current appropriation for the Valuation Fund.

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.

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.*

No expenditures expected different from current law and current Valuation Fund appropriation.

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.*

See note to B.

Name:	Illona A. Jeffcoat-Sacco	Agency:	PSC
Phone Number:	701-328-2400	Date Prepared:	02/10/2005

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2278

Senate Industry, Business and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Adopt Amendment

Motion Made By

Klein

Seconded By

Nothing

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

Total (Yes)

7

No

0

Absent

0

Floor Assignment _____

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

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2278

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass As Amendment

Motion Made By

Klein

Seconded By

Espesgard

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		Senator Fairfield	X	
Senator Klein, Vice Chairman	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espesgard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment

Klein

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

REPORT OF STANDING COMMITTEE

SB 2278: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2278 was placed on the Sixth order on the calendar.

Page 1, line 12, after the period insert "The commission may order that expenses associated with investigating the application made by the public utility for a rate stability plan be paid by the public utility in accordance with section 49-02-02."

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2278

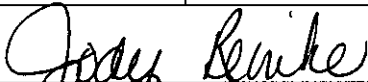
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2278

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-7-05

Tape Number	Side A	Side B	Meter #
2	x		17.4-26.6
Committee Clerk Signature 			

Minutes:

Chairman Keiser: Opened the hearing on SB 2278.

John Olson, Legal Counsel, Otter Tail Power Company: Appeared in support of bill

Basically speaking this bill provides for a phase in of rates before a new resource including a power plant. That application must be made before the start of construction or the purchase of a resource, the utility must provide a full cost of service analysis with the application for the rate stability plan, and it is a plan to prove that would be reviewed annually by the public service commission, before placement for commercial operation there would be a general rate case filing that the utility would make, the senate had amended it to allow cost for the public service commission to be obtained from the evaluation fund so that basically is what the bill does, the reason for the bill was to lower the cost of the project and interest would be paid sooner, that would mediate sticker or rate shock and also save the customers money.

The governor has concerns about the bill as a result of those concerns we are asking that you delay further hearing on the bill, I don't know if there are others that are going to testify today, and allow some process to take place we had conversations between Otter Tail and the Governors Office regarding the PSC view point, that this kind of rate stability plan may already be authorized by state law, so we have asked for that authority in writing hopefully approved by the Attorney General that we can do this.

Representative Keiser: We have opened the hearing, we will conduct the hearing for all of those parties that are here, and then we will have a continuation of the hearing probably this afternoon. The bill was presented it is clear and straight forward, utility companies when they build structures, they get reimbursed for their cost, the question is when do they get reimbursed do they have to build this structure, make it operational and then build it into their rate structure, this bill would allow them to build into their rate structure some of those costs as they are moving toward the completion of the building, there is still going to be sticker shock, your going to have a increased rate to pay, but your going to distribute it over a wider period of time. The question that has come up was 1. do we have the authority to do it yet? The public service commission have develop a document from their prospective that defined and stated that they could do it, that document is still a work in process. So what we are really trying to do is to find whether or not if we currently have the authority.

Bob Gravlen, Utility Share Holders of ND: Appeared in support of Otter Tails position on the bill.

Kathy Aas, Excel Energy: Appeared in support of Otter Tails position.

Richard Elkin, MDU: Appeared also in support of Otter Tails position. Hearing closed

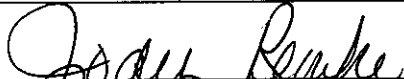
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2278

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-9-05

Tape Number	Side A	Side B	Meter #
2	x		29.7-39.0
Committee Clerk Signature 			

Minutes:

Chairman Keiser: Reconvened on SB 2278.

Kevin Cramer, PSC: Our attorney signed a memo, answering one broad question about our desecration on a specific question which is, if 2278 wasn't passed, do we as the PSC still have authority to enter into rate making, that this bill is aimed at encouraging us to do, and the answer is, Yes we do, we have always believed that we put it on paper because the utilities that are interested in this, are interested in us having this rate making authority, which basically allows us to phase rates in prior or during construction of a plan. We believe that we have that authority, we have drafted this memo, which basically is a legal opinion, we have given that to the companies that are currently looking at it, and I think they are also are getting an opinion by the Attorney General.

Representative Kasper: And if that is in fact the case, why was the bill

introduced because where has been the problem in the past?

Kevin Cramer: There is a similar bill that was passed in South Dakota, since our utilities serve both states, it just seems logical to them that they would do the same in North Dakota, we believe that it could in fact hamper our ability, because as soon as you start putting things in that you may do in statute, there are may not implications.

Representative Kasper: Has there been any argument that the utilities have said they have no authority or what ever?

Kevin Cramer: There hasn't been in my mind. This was really a response to South Dakota, we felt we needed to do this in North Dakota.

Hearing adjourned


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2278

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-15-05

Tape Number	Side A	Side B	Meter #
1	x		0-45.3
3	x		0-1.2
3	x		12.5-25.1
Committee Clerk Signature 			

Minutes:

Chairman Keiser: Reconvened on SB 2278

Kevin Cramer, Commissioner, Public Service Commission: Appeared in support of the bill and provided a written statement and amendment (**SEE ATTACHED TESTIMONY**).

The amendment simply states that the benefits afforded in SB 2278 (the rates stability bill), were to apply only to facilities in North Dakota, that is the sum total of the amendment. The amendment requires that any electric plant investment qualifying for special treatment under SB 2278, be built in North Dakota, this bill lays out its claim work dealing with new electric generation in transmission facilities.

Representative Keiser: With either approach if this bill were to pass as it now exists, or if it didn't pass the companies building the power generating facility, is going to recover those costs, the question is, is there an advantage to recovering them gradually or waiting, and recovering them at the end of the construction, as I understand it, if you can recover them gradually, if this

bill were to be passed and they were to implement this law, they would be able to obtain lower rated financing, they would have less interest expense do to the cost of associated with construction, so they would be saving those things up front, and when they came back to the PSC for rate application, they may or may not be some savings to the consumer, as a result of that.

Kevin Cramer: The certainly, I believe that is the bigger issue, because it is feasible that there is some cost that they shouldn't recover. The more laws you pass, the less discretion you have.

Duane Houdak, Legal Council, Governor, ND: Appeared in support of bill with the amendment afford by Commissioner Cramer, the Governor is supportive of this industry and has worked hard with this body to try to provide a climate for development of the industry here in ND. The amendment that has been offered would provide an incentive to continue that development in the state, to the extent that rate stabilization benefits ND rate payers, PSC already has that authority.

John Olson, Otter Tail Power Co.: Appeared in support of bill, there is no clear process under North Dakota law, for a rate stability plan, the PSC has determined that based upon a broad range of discretion, they can entertain these kind of applications, but there is no guarantee that they would entertain there is no clear process in place, and so when utility lawyers look at this issue, they have to look at it that there could be challenges, there could be obstructions, to such a process, and frankly they could not take this authority that seems to be presumed to the extent of enabling them to issue an opinion to the company that this authority is in place that could be used. .

They position themselves as saying that in other states, use and useful may very well require that the facility in operation be completed , so that a rate increase could be entertained. The question

is not , why do we need the bill? if the PSC already has the authority, which they have never used. The real question is without the bill will the PSC entertain a rate application or trade of process so that we can proceed, so our argument is that the utility needs a strong standing to make sure that this is a process that is in place, the bill provides guidelines. The bill is a good bill it gives the commission a lot of authority. In addition to setting up the rate stability plan process, it gives the commission the authority to take from a certain fund, costs that are employed by the commission in evaluating this particular rate stability plan application. and the commission says on page 1, line 15, the commission may provide for the bond rate increase that to be phased in before commercial operation resources issue. Without the bill is it North Dakota only? I don't think so, I don't think current law provides for that, the commissioners may argue that the have this broad discretion. I don't want the PSC going beyond its bounds and making its decision based upon nothing else then what is good for the rate payer in this state, my point simply is if this is a good bill, for the North Dakota rate payer, then it is a good bill for the North Dakota rate payer no matter where that facility is built, and back to my original point, that decision on where to locate that plant is based upon a lot of judgment and management decisions that go into most prudent and efficient and most cost effective not only to the utility but to the consumer, the rate payers as well. I think it still has the discretion , the authority for the PSC to become involved and what is beneficial for the public interest and beneficial to the rate payer. I would hope that you would defeat this amendment and pass the bill the way it is, in closing, I can only state for Otter Tail, but I can pretty much guarantee, that all of the public utilities are going to be built in facilities in North Dakota in the future, based upon good economic, that North Dakota has a lot to offer, we need to protect our utilities and our rate payers. Under this

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House Industry, Business and Labor Committee

Bill/Resolution Number SB 2278

Hearing Date 3-15-05

legislation, I don't think it is going to have the impact, that you desire to have, and I think that the North Dakota rate payer is going to pay for it, by paying higher interest, by having that sticker shock at the end and so forth. What I am saying, is that this bill will have no impact one way or another on where that utility is going to build that facility.

Bob Grablin, Utility Share Holders of ND: Appeared in support of the bill of the bill in its original form and resist the amendments that were offered this morning,

And we agree with John Olsons testimony.

Representative Kasper: I move a **DO PASS** on **SB 2278**

Representative Vigesaa: I **SECOND** the **DO PASS** motion on **SB 2278**

Motion carried **VOTE: 9-YES 5-NO 0-Absent**

Representative Ruby will carry the bill on the floor

Roll Call Vote #: 1 Date: 3-15-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2278

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep. Kasper 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) 9 No 5

Absent 0

Floor Assignment Rep. Ruby

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

REPORT OF STANDING COMMITTEE (410)
March 16, 2005 7:11 a.m.

Module No: HR-48-5090
Carrier: Ruby
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2278, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2278 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2278

Testimony of Steve Schultz on behalf of Otter Tail Power Company
Concerning SB 2278

Mr. Chairman and members of the committee, my name is Steve Schultz and I represent Otter Tail Power Company.

SB 2278 was introduced by Senator Klein at our request. Adoption of this bill would allow utilities to phase-in the cost of a new resource, such as a new power plant, over a period of years, rather than all at once. This bill would not allow utilities to raise rates automatically, they could only do so under the approval of the Public Service Commission. Once the original request has been approved by the Commission, there would be yearly reviews by the Commission, followed by a full rate case when the new resource becomes commercial. This rate case would be the "true-up" after the stepping-in of the previous years costs.

There are potential benefits to both the customer and the company if this bill is adopted. Rates would gradually increase rather than a significant increase all at one time, the company would see better cash flows during the construction of a new resource, and in the end overall rates will be a little lower. One other benefit to the company is the earlier prudence review by the commission thus helping to insure cost recovery.

Would we use this option for every new resource we acquire, its hard to say. This just gives us another option to evaluate to see what is the best for all parties involved. We respectfully request a Do Pass recommendation from your committee.

PROPOSED AMENDMENT TO SENATE BILL 2278

Page 1, line 12, after "addition.", insert "The commission may order that expenses associated with investigating the application made by the public utility for a rate stability plan be paid by the public utility in accordance with section 49-02-02 of the North Dakota Century Code."

Renumber Accordingly



Utility Shareholders of North Dakota

BOARD OF DIRECTORS

Bob Pile
Fargo

Harold Bruschwein
Wahpeton

Clarence Storseth
Dickinson

Gary Hovdestad
Minot

Larry Hanson
Williston

John M. Olson
Bismarck

Moine Gates
Grand Forks

Richard Kunkel
Lake

Charles Axtman
Jamestown

Bob Graveline, President
Bismarck

TESTIMONY BEFORE THE SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE February 1, 2005 SB-2278

Mr. Chairman, members of the Committee, I'm Bob Graveline of the Utility Shareholders of North Dakota (USND). Our association represents the interests of some 2,100 North Dakota members who own shares of stock in Otter Tail Corporation, Xcel Energy, or MDU Resources Group, the three investor owned utility companies providing service to North Dakota consumers.

I APPEAR THIS MORNING IN SUPPORT OF SB-2278

Passage of SB-2278 will be a win – win situation for all parties.

Passage of his bill will be a winner for ratepayers because loan carrying costs will be lower as debt retirement can begin sooner which will save ratepayers money.

It is a winner for the utility company because of improved cash flow during construction.

It is a winner for investors because there will be less uncertainty with debt issues necessary for construction.

And it is a winner for fairness and government oversight because the Public Service Commission will retain full regulatory control over the entire rate setting process.

Mr. Chairman, members of the Committee, the Utility Shareholders of North Dakota urge you forward a **DO PASS RECOMMENDATION ON SB-2278.**

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1-800-981-5132
E-mail usnd@usnd.org
www.usnd.org

S. B. 2278

Presented by: Kevin Cramer, Commissioner
Public Service Commission

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

Date: March 15, 2005

TESTIMONY

Chairman Keiser & members of the House Industry, Business & Labor Committee, I am Kevin Cramer. I am a commissioner on the North Dakota Public Service Commission and my testimony is my own, however, all three commissioners support the amendment I am proposing.

I'm here to ask you to support the attached amendment to Senate Bill 2278. The premise for my argument to support the proposed amendment is simple and easy to understand. The amendment requires that any electric plant investment qualifying for special treatment under Senate Bill 2278 be built in North Dakota.

The bill commonly referred to as the rate stabilization bill for electric consumers lays out a frame work for dealing with new electric generation and transmission facilities. I think the bill makes a lot of sense. In fact I support the bill in its entirety, other than it needs three additional words—in North Dakota.

In my reading of the bill, it appears that the investor owned utilities are interested in lowering their regulatory and financial risk. I think they would be remiss in their fiduciary responsibilities if they did not seek such advantages. The commission understands those desires and is accustomed to playing in that arena.

For example, the commission entered into a 5 year agreement with Otter Tail Power Corporation and Xcel Energy, Inc. to implement a performance-based regulation (PBR) plan that rewards performance with higher earnings capabilities. Aside from higher earnings opportunities, part of the allure of PBR is that these companies now know the game plan ahead of time.

PBR eliminates some of the regulatory risk that is inherent in cutting costs only to have the commission then order lower rates. PBR eliminates some of the regulatory risk of wrangling with three state elected officials over what is or isn't a fair return on stockholder investment. Last year, Xcel Energy was allowed to increase its rates without the costly process of a rate case before the commission because the rules of the game were already decided when PBR was implemented three years earlier.

However, the elimination of certain risk under PBR also required a higher commitment on the part of these companies to their customers and employees. Aggressive targets were set for acceptable rate levels, reliability, worker safety and customer satisfaction.

The most difficult aspect of PBR was deciding how much each stakeholder should get out of the deal.

Why do I mention PBR? I hope you can see the parallels.

The rate stabilization bill provides for the opportunity to lower the utilities' regulatory and financial risk associated with building power plants and transmission lines. If it didn't, there would be little reason for the utilities to support this bill or House Bill No. 1324, known as the pre-prudence bill. Both House Bill 1324 and this bill are about reducing risk for utilities. Like PBR, these bills provide upfront assurances as to regulatory process and principles.

A few years ago, the North Dakota legislature passed legislation requiring in N.D.C.C. 49-06-02 that the commission allow in rates to cover construction costs for work in progress associated with new facilities that use lignite mined in this state to generate electricity. Evidently, the legislature did not want to provide

incentives for coal mined in Montana or Wyoming because the law reads for lignite coal mined in this state.

This very legislature has passed the PSC introduced bill lowering siting fees and providing a refund mechanism back to the companies building new plants.

This committee and the House passed a transmission authority bill designed to create a financial advantage for building new facilities to move new power generation into the regional and national marketplace. It is one of the boldest moves in positioning North Dakota to meet the growing demand for electricity in years.

Before 2001, the Iowa Utilities Board handled new investments much like the rest of the regulatory commissions do across the country. As a result, one combustion turbine was added between 1984 and 2000. Like California and other areas of the nation, generation capacity became scarce and so new legislation was passed to change the regulatory environment in Iowa. The new legislation requires the same kinds of things you envision in this bill and HB 1324 but with the caveat that the new generation facilities be built in Iowa. Since that legislation, four new large generation facilities are in progress in the state of Iowa.

Other neighboring states have recently passed "native" incentives as well. Minnesota granted an exemption from needing a "Certificate of Public Convenience and Necessity" for a 531 Megawatt coal plant on the iron range. This is a far more generous incentive than what is being offered here. In addition, the Minnesota legislature granted eminent domain for the Iron Range plant and all associated transmission.

Opponents of this amendment will claim the bill as drafted provides an advantage for the rate payers by lowering the amount of money borrowed leading to a lower cost of capital. We all understand the time value of money. I just don't know why my money should have more value to the utility than it does to me.

I want utilities to build power plants wherever it is most economical to do so. But when the economics are the same between a plant here or outside the state, I hope any extra incentives like the ones offered in this bill are extended to companies building in our state.

I believe we are on the verge of an explosion of power generation and transmission growth. North Dakota can benefit from it or sit on the sidelines while neighboring states pass incentives for development.

Mr. Chairman and committee members, I support this bill in its entirety with the amendment and I hope you will as well.

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2278

Page 3, after line 3, insert:

"SECTION 6. Sections 1 thru 5 only apply if the energy conversion facility, transmission facility, renewable energy facility, or facility generating the power to be purchased is in North Dakota."

Renumber accordingly

SB 2278 3-15-05

49-34A-76

GAS AND ELECTRIC UTILITIES REGULATION

(4) Any other conditions which benefit the public interest and may be imposed by the commission consistent with the findings in § 49-34A-74.

Source: SL 1992, ch 331, § 1.

Library References

Electricity 11.3(7).
Westlaw Key Number Search: 145k11.3(7).

49-34A-74. Approval of rate stability plan

The commission may approve a rate stability plan as provided in § 49-34A-73 if:

- (1) The electric utility makes application for a rate stability plan prior to the commencement of construction of the plant additions or new power purchases;
- (2) The electric utility files with the application a full cost of service analysis as required for general rate increases and including a projection of costs and revenues to the date of the anticipated commercial operation of the plant additions or through the term of the new power purchases;
- (3) The commission holds a hearing with notice to be given as required for any rate increase; and
- (4) The commission finds that the rate stability plan is likely to enhance adequate utility service, rate stability, the financial stability of the electric utility, reasonable capital costs, just and reasonable rates, a fair rate of return and other considerations that benefit the public interest.

Source: SL 1992, ch 331, § 2.

Library References

Electricity 11.3(7).
Westlaw Key Number Search: 145k11.3(7).

49-34A-75. Annual review of rate stability plan

Any rate stability plan is subject to annual review. The electric utility shall file annually an abbreviated cost of service analysis showing that year's revenues, costs and revenue requirements and a report of the progress of the construction of the capital additions showing accumulative construction costs for the year and updated cost projections to complete the capital additions.

Source: SL 1992, ch 331, § 3.

Library References

Electricity 11.3(7).
Westlaw Key Number Search: 145k11.3(7).

49-34A-76. Filing general rate case prior to operation of capital additions

Within twelve months prior to the commercial operation of the capital additions, the electric utility shall file a general rate case with a full cost of

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PUBLIC UTILITIES AND CARRIERS

49-34A-71

utilities by the Public Utilities Commission. Any law of this state in conflict with this chapter is hereby repealed insofar as it shall pertain to the regulation of electric utilities as defined in this chapter.

Source: SL 1975, ch 283, § 54.

Library References

Statutes 157.
Westlaw Key Number Search: 361k157.
C.J.S. Statutes § 282.

49-34A-72. Commission participation in federal proceedings—Recovery of expenses

If the commission intervenes or otherwise participates in rate, certificate, or related proceedings before a federal agency and the commission's intervention or participation results, after final litigation, in a refund in wholesale rates to a public utility serving customers in South Dakota, the commission shall be reimbursed from the amount refunded to the South Dakota public utility in an amount equal to the litigation expenses reasonably incurred by the commission. The litigation expenses shall include reasonable attorney's fees, expert witness fees, and all other associated costs. The commission may assess the public utility for the amount of the reimbursement provided for in this section, and the reimbursement assessed shall be deposited in the commission's gross receipts tax fund established pursuant to § 49-1A-2.

Source: SL 1983, ch 342; SL 1991, ch 381, § 14; SL 1994, ch 352, § 8.

Library References

Electricity 8.1(1), 11.3(6).
Gas 6, 14.3(3).
Westlaw Key Number Searches: 145k8.1(1); 145k11.3(6); 190k6; 190k14.3(3).

49-34A-73. Rate stability plan for phase-in of rate increases

Notwithstanding anything in this chapter to the contrary, an electric utility that is subject to rate regulation by the commission and plans major capital additions or new power purchases that are expected to have a material impact on rates may make application to the commission for a rate stability plan to provide for the phase-in of rate increases prior to the commercial operations of the major capital additions or new power purchases. The plan may provide for any of the following:

- (1) Rate increases to be incrementally phased in prior to the commencement of commercial operation of the plant additions or new power purchases;
- (2) To the extent rate increases for additions are allowed prior to commercial operation, restrictions on the capitalization of allowance for funds used during construction for the plant additions;
- (3) Restrictions on other rate increases during the construction period of the plant additions or term of the new power purchases; and

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service analysis including the major capital additions. After notice and hearing the commission shall adjust the rates under the criteria set forth in § 49-34A-8 to be charged by the electric utility commencing with the commercial operation of the major capital addition.

Source: SL 1992, ch 331, § 4.

Library References

Electricity ¶11.3(7).
Westlaw Key Number Search: 145k11.3(7).

49-34A-77. Filing fee for rate stability plan

Upon filing an application for a rate stability plan, the electric utility shall pay a filing fee to be determined by the commission in an amount not to exceed one hundred fifty thousand dollars.

Source: SL 1992, ch 331, § 5; SL 1994, ch 352, § 11.

Library References

Electricity ¶11.3(7).
Westlaw Key Number Search: 145k11.3(7).

49-34A-78. Nonapproval of rate stability plan

If the commission does not approve a rate stability plan as defined in § 49-34A-73, the electric utility may not be prohibited from constructing plant additions and purchasing power and requesting and obtaining rate adjustments as authorized by this chapter.

Source: SL 1992, ch 331, § 6.

Library References

Electricity ¶11.3(7).
Westlaw Key Number Search: 145k11.3(7).

Research References

Treatises and Practice Aids
1997 BNA Daily Report for Executives 33 D119.
1997 BNA Daily Tax Report 33 D70.

49-34A-79. Public or electric utilities authorized to remove certain obstructions

Any public utility or electric utility as defined in § 49-34A-1 and any utility operated by any political subdivision of the state may remove or alter any vegetation or other material if the utility determines that such removal or alteration is reasonably necessary for the safe repair, use, operation, or maintenance of the utility's electric or gas transmission or distribution lines.

Source: SL 1999, ch 229, § 1.

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Library References

Electricity ¶9(1).
Gas ¶9.
Westlaw Key Number Searches: 145k9(1); 190k9.

49-34A-80. Certain commercial small power production facilities subject to 49-34A-80 to 49-34A-92

Any commercial small power production facility, utilizing renewable resources, such as sun, wind, geothermal, or biomass, that begins generating electricity after June 30, 2001, produces ten megawatts or less of electricity as measured by nameplate rating, and is located within one county and owned by a natural person, corporation, nonprofit or for profit business organization, or tribal council (if the facility is located outside the boundaries of the reservation), irrigation district, drainage district, or other political subdivision or agency of the state authorized by statute to carry on the business of developing, transmitting, utilizing, or distributing electric power is subject to the provisions of §§ 49-34A-80 to 49-34A-92, inclusive, for any new or expanded facility.

Source: SL 2001, ch 257, § 1.

Library References

Electricity ¶10.
Westlaw Key Number Search: 145k10.
C.J.S. Electricity § 4.

Research References

Treatises and Practice Aids
BNA Tax Management Portfolios 1480.

United States Code Annotated

Biomass energy and alcohol fuels, see 42 U.S.C.A. § 8831 et seq.
Geothermal Energy Act of 1980, see 30 U.S.C.A. 1511 et seq.
Geothermal energy research, see 30 U.S.C.A. 1101 et seq.
Geothermal Steam Act of 1970, see 30 U.S.C.A. 1001 et seq.
Solar energy research and development, see 42 U.S.C.A. § 5581.
Solar heating and cooling, see 42 U.S.C.A. § 5501 et seq.
Wind Energy Systems Act, see 42 U.S.C.A. § 9201 et seq.

49-34A-81. Repealed by SL 2003, ch 49, § 4

Historical and Statutory Notes

The repealed section related to rural electric cooperatives developing power production facilities using renewable energy exempt from certain taxes.

49-34A-82. Definitions

Terms used in §§ 49-34A-80 to 49-34A-92, inclusive, mean:

- (1) "Department," the Department of Revenue and Regulation;
- (2) "New or expanded facility," a new commercial small power production facility as defined in § 49-34A-80 or an addition to an existing commercial small power production facility, the construction or installation

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