

**SENATE BILL NO. 2137**

Introduced by

Natural Resources Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to amend and reenact subsection 6 of section 49-02-02 and sections  
2 49-05-04, 49-05-04.2, 49-05-04.3, and 49-05-16 of the North Dakota Century Code, relating to  
3 powers of the public service commission and electric and gas public utility application fees; and  
4 to provide a continuing appropriation.

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

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

8 6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys,  
9 and all other expert help and assistance for hearings or investigations on ~~rate~~  
10 ~~increase~~ applications filed by gas or electric public utilities. The expense of any  
11 hearings or investigations and the actual expenses of any employees of the  
12 commission while engaged upon any hearing or investigation must ~~upon the order~~  
13 ~~of the commission~~ be deducted from the application fee paid by the public utility  
14 involved. The commission shall ascertain the costs and expenditures. ~~After giving~~  
15 ~~the public utility notice and opportunity to demand a hearing, and after a hearing, if~~  
16 ~~any, is held, the commission shall render a bill and make an order for payment by~~  
17 ~~certified mail or by personal delivery to one of the managing officers of the public~~  
18 ~~utility. The billing and order may be made from time to time during the hearing or~~  
19 ~~investigation or at the conclusion thereof, as the commission determines. Upon~~  
20 ~~receipt of the bill and order for payment, as evidenced by return receipt or other~~  
21 ~~proof, the public utility shall pay to the commission the amount billed. All amounts~~  
22 ~~not paid within thirty days after receipt of the order for payment draw interest at the~~  
23 ~~rate of six percent per annum from the date of receipt of the order. All costs and~~  
24 ~~expenses collected~~ The application fees received by the commission under this

1            ~~subsection~~ chapter 49-05 must be deposited in a special account within the public  
2            service commission. All moneys deposited in the account are appropriated on a  
3            continuing basis to the commission to pay expenses incurred in the processing of  
4            cases in which application fees are required. The commission shall refund the  
5            portion of a fee collected under chapter 49-05 which exceeds the expenses  
6            incurred for processing the case for which the fee was paid.

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

9            **49-05-04. Application for increase of rates - Information required - Fee.** Any public  
10           utility requesting an increase in its rates above the maximum approved or prescribed by the  
11           commission shall furnish the commission:

- 12           1. The original cost of all its property.
- 13           2. The date of the acquisition of said property.
- 14           3. The amount of money invested in said property.
- 15           4. The amount of stock outstanding.
- 16           5. The amount of bonds outstanding against said property.
- 17           6. All books, papers, and memoranda of the utility showing the financial condition  
18           thereof.
- 19           7. Its total monthly salaries and wage expense for such time as the commission may  
20           request.
- 21           8. An itemized statement of its expenditures.
- 22           9. The details of its profit and loss account.
- 23           10. All other books, papers, vouchers, and accounts which the commission shall ask to  
24           have produced as evidence at the hearing.
- 25           11. An application fee in the amount of one hundred twenty-five thousand dollars.  
26           Upon request of the commission and with the approval of the emergency  
27           commission, the applicant shall pay such additional fees as are reasonably  
28           necessary for completion of the application process by the commission. The  
29           commission shall pay the expenses of investigating a rate increase application  
30           under this section from the application fee paid by the public utility in accordance  
31           with section 49-02-02. The commission may waive the fee.

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

3           **49-05-04.2. Rate adjustment - Federal environmental mandate costs.**

4           1. The commission may approve, reject, or modify a tariff filed under section  
5 49-05-06, which provides for an adjustment of rates to recover jurisdictional capital  
6 costs and associated operating expenses incurred by a public utility to comply with  
7 federal environmental mandates on existing electricity generating stations. For  
8 purposes of this section, federal environmental mandates are limited to any  
9 requirements under the Clean Air Act, the Clean Water Act, or any other federal  
10 law or rule designed to protect the environment. Associated operating expenses  
11 are costs incurred by the public utility to comply with the environmental mandate.

12           The tariff must:

- 13           a. Allow the public utility to recover on a timely basis its investment in capital  
14 costs and associated operating expenses incurred to meet federal  
15 environmental mandates not reflected in the utility's general rate schedule.  
16           b. Allow a return on the public utility's investment made to meet federal  
17 environmental mandates at the level approved in the utility's most recent  
18 general rate case.  
19           c. Provide a current return on construction work in progress to meet federal  
20 environmental mandates provided the cost recovery from retail customers of  
21 the allowance for funds used during construction is not sought through any  
22 other means.  
23           d. Terminate cost recovery after the public utility's costs and expenses to meet  
24 federal environmental mandates have been recovered fully or have been  
25 reflected in the utility's general rate tariffs.

26           2. Rate adjustments filed under the tariff must be accompanied by:

- 27           a. A description and quantification of the costs and expenses incurred by the  
28 public utility to meet federal environmental mandates which are subject to  
29 recovery;  
30           b. A schedule for implementation of the applicable projects; ~~and~~

- 1 c. Calculations to establish that the rate adjustment is consistent with the terms  
2 of the tariff; and
- 3 d. An application fee in the amount of fifty thousand dollars. Upon request of the  
4 commission and with the approval of the emergency commission, the  
5 applicant shall pay such additional fees as are reasonably necessary for  
6 completion of the application process by the commission.
- 7 3. Upon receipt of a rate adjustment filed under the tariff, the commission shall  
8 approve the rate adjustment to become effective unless, after notice and  
9 opportunity for hearing and comment, the commission determines the rate  
10 adjustment does not comply with the tariff or the incurred costs and expenses to  
11 meet federal environmental mandates are not reasonable and prudent. The  
12 commission ~~may order~~ shall pay the expenses of investigating ~~a rate adjustments~~  
13 adjustment to meet federal environmental mandates under this section ~~be from the~~  
14 application fee paid by the public utility in accordance with section 49-02-02. The  
15 public utility has the burden of proving that the rate adjustment complies with the  
16 tariff and that the costs and expenses incurred to meet federal environmental  
17 mandates are reasonable and prudent.

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

20 **49-05-04.3. Rate adjustment - Transmission facility costs.**

- 21 1. The commission may approve, reject, or modify a tariff filed under section 49-05-06  
22 which provides for an adjustment of rates to recover jurisdictional capital and  
23 operating costs incurred by a public utility for new or modified electric transmission  
24 facilities. For purposes of this section, an electric transmission facility includes an  
25 electric transmission line as defined in chapter 49-21.1 and other transmission line  
26 equipment, including substations, transformers, and other equipment constructed  
27 to improve the power delivery capability or reliability of the electric transmission  
28 system; and operating costs include federally regulated costs charged to or  
29 incurred by the public utility to increase regional transmission capacity or reliability.  
30 The tariff must:

- 1 a. Allow the public utility to recover on a timely basis its investment and  
2 associated costs for new or modified electric transmission facilities not  
3 reflected in the utility's general rate schedule;
- 4 b. Allow a return on the public utility's investment made for new or modified  
5 electric transmission facilities at the level approved in the utility's most recent  
6 general rate case;
- 7 c. Provide a current return on construction work in progress for new or modified  
8 electric transmission facilities, provided the cost recovery from retail  
9 customers of the allowance for funds used during construction is not sought  
10 through any other means; and
- 11 d. Terminate cost recovery after the public utility's costs for new or modified  
12 electric transmission facilities have been recovered fully or have been  
13 reflected in the utility's general rate tariffs.
- 14 2. Rate adjustments filed under the tariff must be accompanied by:
  - 15 a. A description and quantification of the costs incurred by the public utility for  
16 new or modified electric transmission facilities which are subject to recovery;
  - 17 b. A schedule for implementation of the applicable transmission facility projects;  
18 ~~and~~
  - 19 c. Calculations to establish that the rate adjustment is consistent with the terms  
20 of the tariff-; and
  - 21 d. An application fee in the amount of fifty thousand dollars. Upon request of the  
22 commission and with the approval of the emergency commission, the  
23 applicant shall pay such additional fees as are reasonably necessary for  
24 completion of the application process by the commission.
- 25 3. Upon receipt of a rate adjustment filed under the tariff, the commission shall  
26 approve the rate adjustment to become effective unless, after notice and  
27 opportunity for hearing and comment, the commission determines the rate  
28 adjustment does not comply with the tariff or the incurred costs for new or modified  
29 electric transmission facilities are not reasonable and prudent. The commission  
30 ~~may order the public utility to~~ shall pay the expenses of investigating a rate  
31 ~~adjustments~~ adjustment for recovery of transmission facility costs under this

1 section from the application fee paid by the public utility in accordance with section  
2 49-02-02.

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

5 **49-05-16. Advance determination of prudence.** A public utility proposing to  
6 construct, lease, or make improvements to an energy conversion facility, renewable energy  
7 facility, transmission facility, or proposed energy purchase contract from another entity or  
8 person for the purpose of ensuring reliable electric service to its customers may file an  
9 application with the commission for an advance determination of prudence regarding the  
10 proposal. The commission ~~may order that~~ shall pay the expenses associated with investigating  
11 the application made by the public utility for prudence of a resource addition ~~be~~ from the  
12 application fee paid by the public utility in accordance with section 49-02-02.

- 13 1. The commission may issue an order approving the prudence of an electric  
14 resource addition if:
- 15 a. The public utility files with its application a projection of costs to the date of the  
16 anticipated commercial operation of the electric resource addition;
  - 17 b. The public utility files with its application a fee in the amount of one hundred  
18 twenty-five thousand dollars. Upon request of the commission and with the  
19 approval of the emergency commission, the applicant shall pay such  
20 additional fees as are reasonably necessary for completion of the application  
21 process by the commission.
  - 22 c. The commission provides notice and holds a hearing, if appropriate, in  
23 accordance with section 49-02-02; and
  - 24 e. d. The commission determines that the resource addition is reasonable and  
25 prudent. For facilities located or to be located in this state the commission, in  
26 determining whether the resource addition is reasonable and prudent, shall  
27 consider the benefits of having the energy conversion facility, renewable  
28 energy facility, transmission facility, or facility generating the energy to be  
29 purchased located in this state.

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