

Presented by: Julie Fedorchak
Commissioner
Public Service Commission

Before: Interim Economic Impact Committee
Honorable Connie Triplett, Chairman

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TESTIMONY

Good Afternoon.

Thank you for the invitation to visit with you again about this important issue of extending Natural Gas service to unserved areas of our state.

Chairman Triplett has asked for additional information about the Commission’s existing jurisdiction when it comes to this issue. I’ve consulted with our attorneys and regulatory staff and am pleased to share this information with you today. They are also in the audience for additional questions as both Illona Jeffcoat-Sacco and Mike Diller have, combined, nearly 50 years of experience on these issues.

The commission has broad discretion spelled out in Title 49 to entertain, investigate, analyze and decide rate and rate-related applications and other proceedings, and has exercised this discretion in the past.

The relevant portions of Title 49 are Chapters 49-02, 49-05 and 49-06. Chapter 49-02 sets out the general powers of the commission, including the power to “originate, establish, modify, adjust, promulgate and enforce tariffs, rates, joint rates and charges of all public utilities.”

Chapter 49-05 sets out the procedure for the commission to use on the regulation of utilities and provides that the commission, after a hearing on a utility’s rate application, must establish rates that are “just and reasonable.”

Chapter 49-06 sets out the process for the commission to use to value utility property in order to determine reasonable rates. This chapter provides that “for the purpose of ascertaining just and reasonable rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility...used and useful for the service and convenience of the public....”

Later the chapter defines the “value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility...”

Terms such as “just and reasonable,” “used and useful,” and “prudently” are among several traditional ratemaking standards used in statutes and case law to describe and define how regulators should determine appropriate rates. These terms are not defined in North Dakota statute and the statute contains no language limiting the commission’s discretion in interpreting the terms.

Instead, their meaning is derived from commission and court interpretations over the years, on a case by case basis. Just what set of facts will result in a finding of reasonableness or prudence will depend on the circumstances of each case.

As a general rule, appellate courts tend to defer questions of fact to the administrative agency that weighed the facts in the first instance, and holds the expertise in the subject matter in question. Courts usually do not substitute their judgment for that of the agency, unless the agency abused its discretion. The commission, then, has great latitude in determining the meaning of the ratemaking standards and how they apply to any particular set of facts.

The “used and useful” standard is no exception. The definition of “used and useful” has been and will continue to be within the commission’s discretion. Often litigants rely on the “used and useful” standard to advocate exclusion of costs from rate base for power plants that never go on line, or for acquisition premiums paid to acquire utility property. However, it is precisely these types of decisions that are within the discretion of the regulator. In certain situations, it might be appropriate for a regulator to allow such costs in rates, and in others it might not be appropriate. This is the reason why such decisions are in the hands of an administrative agency with experience and expertise in the subject-matter.