

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2134

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2134

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2134

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 01-10-05

Tape Number	Side A	Side B	Meter #
1	xxx		551
Committee Clerk Signature <i>Lisa VanBerkon</i>			

Minutes: Chairman Mutch opened the hearing on SB 2134. All Senators were present.

SB 2134 relates to unreasonable charges and refunds by a utility company.

Illona Jeffcoat-Sacco, Executive Secretary Director of the Public Utilities Division of the Public Service Commission, introduced the bill.

Chairman Mutch: How long is the lag time?

Illona: For a rate increase, it's not that long. The time was shortened last session as well, to six months. For a rate decrease, it takes us a little longer because we do not have access to that valuation fund. It's another provision. If we bring the complaint to lower rates, we are scrounging around looking for operating funds, and taking a lot of normal resources away from our normal work load.

Senator Mutch: Normally if they ask for a rate increase, and you don't grant them as much as they requested, then you would adjust it accordingly. You don't have to refund the money at during the lag time when they have increased the rates.

Ilona: For an increase, for the last two years, they do get an increase and if the eventual final increase is different, they would refund that for the last two years. For the rate decrease, just sort of isolate that money that that issue, and if the Commission wins the complaint, they get that money back.

Opposition:

Dennis Boyd, MDU Resources Group in Bismarck, appeared in opposition. See attached testimony.

Senator Heitkamp: What would you say to anyone who might say that you got the same authority a couple of years ago, only in reverse?

Dennis: We don't think that this bill is similar to that bill. Under the bill that was passed last session, if we file for interim rates, we have to go through a great deal of research and investigation to justify that filing. Under this bill the PSC could just file a one paragraph complaint and we could be subject to retroactive rate making. So, the don't compare.

Kathy Aas, Community Relations Manager in Minot and Government Affairs Representative in North Dakota, spoke on behalf of Xcel Energy, in opposition to the bill.

See attached testimony.

Senator Mutch: When a utility company files a rate increase, does the PSC have the prerogative of amending that rate?

Kathy Aas: When we file the rate increase, then there's a two month period that we are allowed to implement our interim rate.

Senator Mutch: But they don't adjust your filing?

Kathy: They let us put in the rates that we go by, and then if they would find that those were unreasonable, then it would be decreased and we would pay it back to the customer.

Senator Mutch: Then at that time, if you have a disagreement, then the utility would refund the money in the rates?

Kathy: Correct.

Senator Klein: When you raise the rate, you come before the commission with all kinds of information that you have gathered, to justify your increase. The commission then looks at all of this stuff and decides the raise is necessary. Then after two months, you are in the interim and you can start charging the increase. However, under this bill, someone could just say that they think there should be a decrease with no big stack of paper to back it up and then you have to come back with your stack of paper to show that you really should have that?

Kathy: With this law, we feel that they could implement the decrease effective the day the complaint was filed. But their investigation process has no limit.

Senator Klein: But the burden of proof is on you once again, to prove that you deserve the rate that you are currently getting. There is no lag there.

Senator Heitkamp: It really comes down to how well you are working with the PSC? I understand that they can take action with one person sending them a note.

Dennis: They could do that on motion with the commission. A scenario that occurred to me last night, is that a consumer in a very small town, maybe the consumer happens to be the mayor. He can file a complaint signed by the governing body, and that would trigger this process.

Senator Heitkamp: But he would still have to get 10% of all the people who got their rates raised, right?

Dennis: I don't believe so.

Senator Mutch : Well, has there been any problems with the way the law is now?

Kathy: Not that I am aware of.

Senator Mutch : In many instances you have an automatic pass-through on the rates being raised.

Dennis: Perhaps you are referring to the fuel adjustment clause, those are automatic monthly pass throughs.

Senator Fairfield : I would think that this would be very infrequent. Your testimony here says this is something that the commission has already approved, so what could possibly occur other than some major event?

Dennis: We went 14 or 15 years before we had a rate increase. All of the sudden a commodity price dropped or there could be an over earning there. But the point is when the utility rates balance out and are reasonable.

Senator Fairfield: These are rates that have been approved by the PSC, right? They are elected officials, they are certainly not going to do anything arbitrary when it comes to.....

Dennis: We feel that they already have the ability to look into things when they feel necessary. The burden of proving unreasonable rates is on the PSC.

John Olson, Ottetail Power Company, stated for the record that they are opposed to the bill.

Senator Heitkamp: Would one of the three present Public Service Commissioners tell us why this bill is in front of us.

Tony Clark, PSC President, spoke at the request of Senator Heitkamp. The idea of this bill is that there needs to be fairness with the interim rates. What interim rates do is allow the utility

company to start collecting increased rates very early in the proceeding. But the flip side isn't true when the utility company is over-earning. The most recently initiated commission case against a utility company to decrease rates was MDU Electric. In that case you had multiple years of MDU earning 16-18% rates of return. When we set rates there is a benchmark earning standard usually around 11-13%. The notion that the commission could simply file a one paragraph complaint and the rates would then be decreased is simply not supported in this bill.

Commission staff would have to compile the same pile of evidence that the utility company would. Then after the commission made a decision, then the rates would go into effect.

Senator Heitkamp: Hasn't the commission already approved the increase? Shouldn't the commission be responsible?

Tony: The burden would be on the commission staff. So if the utility company is found over earning, as of the date of the filing of the complaint, it goes into effect.

Senator Nething : It doesn't say that here? Aren't you involved in this process?

Tony: North Dakota has a system. The commissioners are supposed to be independent from the actual case itself. In most states they have an office of consumer council that is separate from the commission. We have a split staff. One for advocacy and one for advisory. In a contested rate case proceeding, commissioners are not supposed to talk to staff. In this case the commission would have to authorize the case, but then be non-partial.

Senator Nething: What is the problem? Is there an abuse occurring?

Tony: There is no pending rate decrease proceedings right now. The problem is the sense of unfairness that customers have with the utility company over earning.

Senator Nething: Do people come to you with their problems and if so, who?

Tony: We do hear about it. Customers on the street.

Senator Mutch: What area are they complaining about?

Tony: Regulated entities. Customers are displeased for being over charged.

Senator Nething: How many people complain to you? 10? 50?

Tony: I don't know, it's like the legislature. We hear from a number of constituents.

Senator Krebsbach: There is no serious need to have the authority, but more to level the playing field?

Tony: We need the legislation, but there is no current proceedings. But if there ever was, there would be a sense of fairness.

Susan Wefald, PSC, I support everything Tony Clark said. The burden of proof is still on our staff.

Susan Wefald also stated that Job Service North Dakota supports the bill.

End of Testimony. **Hearing was closed. No action was taken.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2134

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-18-05

Tape Number	Side A	Side B	Meter #
no tape			
Committee Clerk Signature <i>Lisa VanBeekom</i>			

Minutes: **Chairman Mutch opened committee discussion on SB 2134. All Senators were present. SB 2134 relates to unreasonable charges and refunds by a utility company.**

Senator Nething moved a DO NOT PASS. Senator Klein seconded.

Roll Call Vote: 6 yes. 1 no. 0 absent.

Carrier: Senator Nething

Hold, sign next week

Date: *Jan. 18*
Roll Call Vote #: *1*

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

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number SB 2134

Action Taken Do not Pass

Motion Made By Nothing Seconded By Klein

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) 6 No 1

Absent 0

Floor Assignment Nothing

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

REPORT OF STANDING COMMITTEE (410)
January 21, 2005 3:22 p.m.

Module No: SR-14-0877
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2134: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2134 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

SB 2134

MONDAY - JAN. 10

SB 2134

FOR THE RECORD, MY NAME IS DENNIS BOYD. I AM WITH MDU RESOURCE GROUP, INC. AND APPEARING THIS MORNING ON BEHALF OF OUR UTILITY DIVISION, MONTANA-DAKOTA UTILITIES. WE ARE STRONGLY OPPOSED TO SB 2134.

THIS PROPOSAL WOULD GIVE THE PUBLIC SERVICE COMMISSION UNPRECEDENTED AUTHORITY TO REQUIRE RETROACTIVE REFUNDS AFTER A RATE DECREASE PROCEEDING. WITH INTEREST. TO OUR KNOWLEDGE, NO OTHER UTILITY REGULATORY BODY ANYWHERE IN THE UNITED STATES CURRENTLY HAS THIS AUTHORITY. THE PSC CAN NOW FILE A RATE DECREASE PROCEEDING ANYTIME. HOWEVER, THERE IS NO RETROACTIVE PROVISION ORDERING REFUNDS WITH INTEREST FROM THE DATE THE DOCKET WAS OPENED, AND THE BURDEN OF PROOF IS ON THE COMMISSION.

WHEN A UTILITY FILES A RATE CASE, IT IS THE RESULT OF MANY, MANY MONTHS ON INVESTIGATION AND COMPLICATED SUPPORTING DOCUMENTATION. WHEN A RATE CASE IS ULTIMATELY ~~DECIDED~~ DECIDED AND NEW RATES ARE PUT INTO EFFECT, THOSE RATES ARE DEEMED "JUST AND REASONABLE", AND THEY REMAIN IN EFFECT UNTIL THE NEXT RATE CASE. THROUGH THE LATE 1980'S AND MOST OF THE 1990'S, THERE WERE VERY FEW RATE CASES. OUR MOST RECENT RATE CASES WERE THE FIRST IN MORE THAN A DECADE. ~~UNDER A~~

UNDER A LAW PASSED LAST SESSION, UTILITIES CAN NOW PUT "INTERIM RATES INTO EFFECT

AT ANY TIME DURING THAT PERIOD OR INTO THE FUTURE, ~~THE~~ PSC COULD INITIATE A RATE DECREASE PROCEEDING UNDER THEIR CURRENT AUTHORITY. THERE IS NO NEED FOR SB 2134.

IN ADDITION WE BELIEVE SB2134 IS UNBALANCED & UNFAIR. UNDER SB 2134 THE PSC COULD SIMPLY FILE A ONE PARAGRAPH COMPLAINT. THERE ~~IS~~ ^{ARE} NO REQUIREMENTS FOR SUPPORTING DOCUMENTATION - THERE IS NO JUSTIFICATION REQUIRED FOR THE COMPLAINT. ON THE OTHER HAND, THE COMPLAINT WOULD TRIGGER A SERIES OF ~~OF~~ EXTENSIVE STUDIES AND BACKGROUND INVESTIGATIONS BY THE UTILITY, WITH THE ULTIMATE BURDEN OF PROOF BEING PLACED ~~ON~~ ON THE UTILITY. WE WOULD BE PLACED IN THE POSITION OF DEFENDING OURSELVES AND PROVING THE CASE. WE BELIEVE THIS IS UNFAIR AND UNBALANCED, AND WOULD BE AUTHORITY UNPRECEDENTED ANYWHERE IN UTILITY REGULATION.

I WONDER WHAT WOULD HAPPEN UNDER THIS ^{HYPOTHETICAL} ~~SCENARIO~~ SCENARIO. SUPPOSE THE PSC FILED A COMPLAINT, ALLEGING A UTILITY WAS OVERREARING. AFTER A LENGTHY AND EXPENSIVE INVESTIGATION, IT WAS FOUND THE UTILITY WAS NOT OVERREARING. WOULD THEY ALLOW US TO RECOVER THE EXPENSES OF DEFENDING ~~US~~ OURSELVES BY RAISING OUR ~~THE~~ UTILITY RATES? ^{UNLIKELY.} ~~UNLIKELY~~ WHAT IF THE INVESTIGATION FOUND THE UTILITY WAS

UNDEREARNING? WOULD THEY ALLOW US A RETROACTIVE
RATE INCREASE WITH INTEREST ~~AND~~ AND A MECHANISM
TO RECOVER THE EXPENSES OF DEFENDING OURSELVES?

UNLIKELY.

NOBODY LIKES PAYING HIGH UTILITY BILLS, BUT MANY
MANY FACTORS CAN AFFECT UTILITY EARNINGS - THE
MARKET PLACE (COMMODITY COST OF COAL/NATURAL GAS),
WEATHER, LABOR COSTS, ETC. UTILITY ~~RATE~~ EARNINGS
ARE AFFECTED BY MANY FACTORS.

WE BELIEVE THE STABILITY OF ^{UTILITY} RATES OVER THE PAST
10-15 YEARS DEMONSTRATES THE PRESENT SYSTEM IS
WORKING VERY WELL. SB 2134 IS UNFAIR AND
UNBALANCED AND ASKS FOR UNPRECEDENTED AUTHORITY
IN UTILITY RATE MAKING. WE URGE YOU TO
GIVE SB 2134 A STRONG DO NOT PASS
RECOMMENDATION.

MR. CHAIRMAN & MEMBERS ^{OF} THE COMMITTEE, THAT
CONCLUDES MY TESTIMONY.

IF ASKED ABOUT LAST SESSION'S BILL -

- THIS BILL IS NOT ANTAGONOUS BECAUSE

- 1) INTERIM RATE REQUESTS REQUIRE A SEPARATE FILING
- 2) REPUNDS WITH INTEREST IN LAST YEAR'S BILL IS ACTUALLY

A CONSUMER PROTECTION BECAUSE IT ASSURES UTILITY WILL GIVE
CAREFUL THOUGHT & INVESTIGATION TO INTERIM FEEINGS. IF IT IS
FOUND A UTILITY IS OVEREARNING, RATE REDUCTIONS ARE PROSPECTIVE,
NOT PUNITIVE. ~~RE~~ THERE IS NO RETROACTIVE PROVISION.

Xcel Energy Testimony
SB 2134
Senate Industry, Business and Labor Committee
January 10, 2005

Good morning, Mr. Chairman, Members of the Committee. For the record, my name is Kathy Aas and I work for Xcel Energy, serving as community relations manager in Minot and government affairs representative in North Dakota.

Xcel Energy opposes SB2134 because it establishes unfair rules for the North Dakota Public Service Commission review and investigation of utility rates. This law creates the potential for costly, protracted, and unnecessary commission investigations.

This law allows the commission to simply lodge a complaint against an electric or gas utility that it believes has rates, which are "unreasonable." Presumably, this would imply that existing commission-approved rates were excessive. Once a complaint had been filed, an investigation by the commission would ensue. The law sets no time limit for the commission to complete its review. If the commission were to ultimately determine that rates were unreasonable, the utility would be required to refund to all customers the amount the commission deemed to be excessive – with interest - from the date the complaint was filed. In addition, the utility would implement lower rates prospectively.

Current law already allows the Public Service Commission to review the earnings reports which are submitted annually by utilities operating in North Dakota, and conduct financial audits or reviews which may eventually lead to rate decreases. Xcel Energy has implemented two rate decreases in the past eight years as a result of such commission

reviews, demonstrating that the present process works.¹ Such a decrease, however, is not implemented until the commission has conducted a thorough investigation justifying the need for a change in rates, and issued an order to decrease rates.

It would appear that the commission submitted this bill as a response to legislation passed in the previous legislative session which allows utilities to implement limited rate increases, called “interim rates,” during the seven-month process of hearing a general rate case. Interim rates are commonly allowed in many states to protect the utility from lost revenues during the often-lengthy commission rate case review process. However, this law is not equivalent to the interim rate law for several reasons:

- To petition for an interim rate increase, a utility must assemble and publish significant amounts of financial data and expert testimony justifying the interim and proposed increase to the commission. This law requires that only a complaint be filed to establish the implementation date of any future order to decrease rates.
- When a utility files a petition for an interim rate increase, it must wait two months before it can implement those rates. This law allows the commission to effectively set the implementation date of any rate decrease as the same day the complaint is filed.
- If the commission’s final order in a general rate application results in rates higher than the interim rates already in place, the utility is NOT allowed to retroactively recover the difference back to the date interim rates were implemented. The final rates are prospective only.

¹ 1996 Gas rate reduction of \$500,000 in Case No. PU-400-95-559, and an electric rate reduction in 2000 as part of a Commission investigation, which was subsequently rolled into the Xcel Energy merger docket and resulted in a \$250,000 rate reduction.

Xcel Energy testimony – page 3

This bill is unnecessary, flawed, and possibly detrimental to the cause of rate stability in the state. It would subject utilities to greater costs and regulatory uncertainty by holding the utility hostage to potentially frivolous complaints. We respectfully recommend a DO Not Pass.

S. B. 2134

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

Before: Industry, Business and Labor
Honorable Duane Mutch, Chairman

Date: 10 January 2005

TESTIMONY

Mr. Chairman and committee members, my name is Illona Jeffcoat-Sacco. I am the Executive Secretary of the Public Service Commission and Director of the Public Utilities Division. The Commission asked me to appear here today to testify in favor of Senate Bill 2134, introduced at our request.

North Dakota has a statutory provision, enacted in 2003, allowing an electric or gas utility to begin to charge higher rates during the interim while its rate increase application is pending before the Commission. These interim rates are subject to refund if the final decision provides for rates lower than those charged in the interim. A copy of the law that includes both this interim rate provision and the proposed new language is attached.

Under current law, however, there is no flip side to the interim rate coin. If staff or an interested party files a complaint against an electric or gas company to lower rates, it is not until the

matter is finally decided by the Commission that any lower rates could go into effect. Ratepayers could begin paying higher rates almost as soon as a rate increase application is filed, but would not begin paying lower rates until the full complaint proceeding is final.

The purpose of this bill is to level the playing field by providing that in the event a complaint proceeding results in lower rates, the funds collected by the utility during the interim between filing the complaint and the time new lower rates can be effective are returned to ratepayers.

The language used in this bill is substantially similar to language currently applicable to telecommunications utilities under chapter 49-21.

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

CHAPTER 49-05
PROCEDURE ON REGULATION OF PUBLIC UTILITIES

49-05-01. Who may make a complaint. Complaint may be made by the commission on its own motion, or by any person or association, by petition or complaint in writing, setting forth any fact or thing done or omitted to be done by any public utility, including any rule, regulation, or rate established or fixed by or for any public utility, in violation or claimed violation of any provision of law or any order or rule of the commission.

49-05-02. Right to make certain complaints limited. No complaint as to the reasonableness of any rates or charges of any heat, gas, electrical, water, or telecommunications utility shall be entertained by the commission except when made upon its own motion, unless the same is signed by the governing body of the county or city, if any, within which the alleged violation occurred, or by not less than ten percent of the consumers or purchasers of such heat, gas, electrical, water, or telecommunications service.

49-05-03. Hearing on complaint. The commission shall fix the time and place of hearing upon any complaint and shall serve notice thereof upon the complainant and the utility affected thereby. Such notice shall be given and proceedings shall be conducted as provided by chapter 28-32.

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

1. The original cost of all its property.
2. The date of the acquisition of said property.
3. The amount of money invested in said property.
4. The amount of stock outstanding.
5. The amount of bonds outstanding against said property.
6. All books, papers, and memoranda of the utility showing the financial condition thereof.
7. Its total monthly salaries and wage expense for such time as the commission may request.
8. An itemized statement of its expenditures.
9. The details of its profit and loss account.
10. All other books, papers, vouchers, and accounts which the commission shall ask to have produced as evidence at the hearing.

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

1. A public utility, at its option, may use any one of the following twelve-month periods as its test year for rate filings with the commission:
 - a. A historical test year, which may be either the latest twelve-month period for which actual data is available at the time of filing new schedules or the latest

calendar or fiscal year for which actual data is available at the time of filing new schedules.

- b. A current test year, which is any consecutive twelve-month period ending not later than twelve months after the date new schedules are filed. A public utility selecting a current test year also shall file data for the twelve-month period immediately preceding the current test year selected and that period is the "historical period" for the public utility.
 - c. A future test year, which is any consecutive twelve-month period ending no later than twenty-four months after the date new schedules are filed. A public utility selecting a future test year must file data for the twelve consecutive months immediately preceding the future test year and that period is the "current period" for the public utility.
2. A public utility selecting a current or future test year shall present the following information:
 - a. A comparison of forecast data to historical period data to demonstrate the reliability and accuracy of the utility's forecast including a comparison of the prior years' forecast or budgeted data to actual data for those periods.
 - b. A statement that the public utility's forecast is reasonable, reliable, and was made in good faith and that all basic assumptions used in making or supporting the forecast are reasonable, evaluated, identified, and justified to allow the commission to test the appropriateness of the forecast.
 - c. A statement that the accounting treatment that has been applied to anticipated events and transactions in the forecast is the same as the accounting treatment to be applied in recording the events once they have occurred.
 3. The public utility may update its filing for material changes as actual data becomes available up to thirty days before the hearing. Except for good cause shown, a public utility may not submit more than one updated filing before the hearing. In the absence of an updated filing by the public utility, the commission may require a public utility to update its filing when the commission staff introduces evidence that a material change has occurred.
 4. A public utility may propose estimated or calculated adjustments to the selected historical or current test year for all known and measurable changes in operating results as measured in the test year. The adjustments must be made in the same context and format as the information was provided in the original filing. The adjustments may reflect material changes in plant investment, operating revenues, expenses, and capital structure if the changes occurred during the selected historical or current test year or are reasonably certain to occur subsequent to the selected test year within twelve months from the date of the rate filing.

49-05-05. Changes in tariff rates - Notice to commission - Filing fee. No change shall be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules, classifications, or service which have been filed and published by any public utility, except after thirty days' notice to the commission. The notice shall state plainly the changes proposed and except for services must be accompanied by a fifty dollar filing fee. The commission, for a good cause shown, may allow changes upon less than the notice herein specified, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

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

1. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, or rule, increasing or decreasing, or resulting in an increase or

decrease in any rate, is filed with the commission, the commission may suspend by motion the rate, classification, contract, practice, or rule but the period of suspension may not extend more than six months beyond the time when it otherwise would go into effect. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of the rate, classification, contract, practice, or rule. On such hearing, the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, rule, or practice is just and reasonable is upon the public utility applying for the increase. All such rates, classifications, contracts, practices, or rules, not suspended, on the expiration of thirty days from the time of filing with the commission, or of such lesser time as the commission may grant, become effective rates, classifications, contracts, practices, or rules, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.

2. Notwithstanding that the commission may suspend a filing and order a hearing, a public utility may file for interim rate relief as part of its general rate increase application and filing. If interim rates are requested, the commission shall order that the interim rate schedule take effect no later than sixty days after the initial filing date and without a public hearing. The interim rate schedule must be calculated using the proposed test year cost of capital, rate base, and expenses, except that the schedule must include:
 - a. A rate of return on common equity for the public utility equal to that authorized by the commission in the public utility's most recent rate proceeding;
 - b. Rate base or expense items the same in nature and kind as those allowed by a currently effective commission order in the public utility's most recent rate proceeding; and
 - c. No change in existing rate design.
3. In ordering an interim rate schedule, the commission may require a bond to secure any projected refund required by subsection 4. The terms of the bond, including the amount and surety, are subject to the commission's approval.
4. As ordered by the commission, the utility shall promptly refund to persons entitled thereto all interim rate amounts collected by the public utility in excess of the final rates approved by the commission plus reasonable interest at a rate to be determined by the commission.

49-05-07. Immunity from prosecution for self-incrimination. No person subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in any investigation or inquiry by or hearing before the commission or any commissioner upon the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence. The provisions of this section shall not exempt any person from prosecution or punishment for perjury. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

49-05-08. Orders and decisions of commission - Conclusive. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

49-05-09. Decisions of commission - Rescission or amendment. The commission, at any time, upon due notice to the public utility affected and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it. Any order rescinding, altering, or amending a prior order or decision, when served upon the public utility affected, shall have the same effect as an original order or decision.

49-05-10. Improper action taken by utility - Damages - Who may sue - Recovery. In case any public utility shall do, cause to be done, or permit to be done, any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or shall omit to do any act, matter, or thing required to be done, either by the constitution, any law of this state, or any order or decision of the commission, such public utility shall be liable to the persons, corporations, or limited liability companies affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court shall find that the act or omission was willful, the court, in addition to the actual damages, shall award damages for the sake of example and by way of punishment. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation, limited liability company, or person. No recovery under this section in any manner shall affect a recovery by the state of the penalties provided in this title or the power to punish for contempt.

49-05-11. Orders issued by commission - Period remaining in force. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in such order or until revoked or modified by the commission, unless the same is suspended, modified, or revoked by order or decree of a court of competent jurisdiction.

49-05-12. Appeal from decision of commission. Any party to any proceeding heard by the commission feeling aggrieved by the decision or by the entry of any final order of the commission therein may appeal therefrom to the district court in the manner prescribed in chapter 28-32.

49-05-13. Suspension of order on appeal only by order of court. Repealed by omission from this code.

49-05-14. Stay on appeal - Suspending bond - Impounding excess charges. In case the order or decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond first shall have been executed and filed with and approved by the district court, payable to the state of North Dakota, and sufficient in amount and security to ensure the prompt payment, by the party appealing, of all damages caused by the delay in the enforcement of the order or decision of the commission and of all the moneys which any person, corporation, or limited liability company may be compelled to pay, pending the appeal, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case said order or decision is sustained. The district court, in case it stays or suspends the order or decision of the commission in any matter affecting rates, also by order shall direct the public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation, limited liability company, or person in excess of the sum which such corporation, limited liability company, or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended. Upon a final determination of an appeal, the court shall make an appropriate order disposing of the impounded funds in accordance with such determination. In the event the public utility shall fail to comply with the conditions of the stay bond, the commission may sue thereon for the use and benefit of the patrons or others who have suffered damage by reason of the stay.

49-05-15. Appeals to supreme court. The commission, the public utility, the complainant, or any other interested person, after the entry of judgment in the district court upon an appeal from the order of the commission, may prosecute an appeal to the supreme court of this state. Such appeal shall be taken as prescribed in chapter 28-32.