What Is Prudence?

What a reasonable, prudent manager would have done with the information available at the time the decision was made — judged prospectively, not with hindsight.

THE REASONABLE PERSON STANDARD

⚖

Sound Judgment

At the time of decision

Available Information

At the time of decision

Risk Weighed

At the time of decision

Resources Managed

At the time of decision

✓

Reasonable Circumstances

At the time of decision

Prudence vs. Related Standards

Reasonableness

Reasonableness is often a synonym. In some jurisdictions prudence sets a higher bar — it demands active justification, not mere absence of unreasonableness.

"Used & Useful"

Used & Useful asks whether completed plant is delivering service to ratepayers (a rate base / depreciation question). Prudence asks whether the decision to build was sound and whether the resulting costs are reasonable — they are independent tests.

Least-Cost Planning

Prudence encompasses process; least-cost planning tests whether the chosen option was the most economical among alternatives. An investment can be prudent yet not least-cost if alternatives were not properly evaluated.

Accounting / Audit

A financial audit confirms that money was spent as recorded. A prudence review asks whether it should have been spent at all, on what, and when. Passing an audit provides zero defense on prudence.

The Regulatory Mandate to Invest

Gas capital investments were required by federal law and state regulatory order — not elected by management

Federal Pipeline Safety Acts

The Pipeline Safety Improvement Act (2002) and the Pipeline Safety, Regulatory Certainty, and Job Creation Act (2011) imposed mandatory integrity management and system upgrade requirements on every LDC nationwide.

PHMSA / DIMP Regulations

49 CFR Part 192 Subpart P (eff. 2009) required every distribution operator to develop a DIMP — systematically identifying and remediating high-risk facilities including vintage cast iron and unprotected bare steel pipe.

State Commission-Ordered Programs

State PUCs across the country ordered or approved Accelerated Replacement Programs targeting leak-prone pipe — with defined timelines, annual spending targets, and commission-approved project scopes and tracking mechanisms.

Post-Incident Federal Directives

NTSB and PHMSA investigations following San Bruno (2010) and Allentown (2011) produced emergency orders and Corrective Action Requirements — mandating immediate infrastructure action outside normal approval cycles.

The Advocate's Prudence Review Checklist

- ✓ Has the utility submitted a formal cost-benefit analysis for major projects?
- ✓ Were alternatives — including non-pipeline options — genuinely evaluated?
- ✓ Is the demand forecast conservative and based on documented, current data?
- ✓ Is there competitive bidding documentation for major contracts?
- ✓ Does the record show what information management had at the time of decision?
- ✓ Does project sizing match demonstrated need — or aspirational demand?
- ✓ Has the utility addressed affordability and stranded asset risk explicitly?
- ✓ If time was insufficient: has the advocate filed an explicit prudence disclaimer?

Red Flags: What to Look For

Unnecessary or Premature

- Capacity additions without demonstrated need (demand forecasting)
- Acceleration of planned projects with no documented justification
- Replacement programs where repair was technically feasible and economic

Discretionary — Benefits < Costs

- No formal cost-benefit analysis submitted or performed
- Benefits speculative or deferred beyond the analysis horizon
- Customer benefits quantified loosely; costs documented precisely

Process Failures

- Alternatives analysis absent, cursory, or constructed post-hoc
- No vendor competitive process or pricing benchmark in the record
- Project scope changes without commission notification or re-approval

O&M Warning Signs

- Deferred maintenance that created the capital need (inadequate prior O&M)
- O&M reductions that compromise safety or reliability metrics
- Contractor costs with no competitive bidding documentation

Incentives & Regulatory Signals

❌ When Reviews Are Weak or Absent

- Utilities learn that capital expenditures receive automatic deference
- Spending grows unchecked — ratepayers absorb the cost
- Risk is effectively transferred from shareholders to customers
- Imprudent projects become 'precedent' for future ones

✅ When Reviews Are Rigorous

- Utilities prepare thorough cost-benefit analysis before filing
- Alternatives are genuinely evaluated, not pro forma
- Management discipline improves across the utility sector
- Consumer interests are protected with accountability