

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -
2008**

COMMITTEE STATEMENT

LB1095

Hearing Date: February 12, 2008

Committee On: Urban Affairs

Introducer(s): (Aguilar)

Title: Change provisions relating to the extension of natural gas mains under the State Natural Gas Regulation Act

Roll Call Vote - Final Committee Action:

Placed on General File with Amendments

Vote Results:

| | |
|-----------------------|---|
| 6 Yes | Senators Cornett, Friend, Janssen, Lathrop, McGill, Rogert, |
| 0 No | |
| 1 Absent | Senators White |
| 0 Present, not voting | |

Proponents:

Senator Ray Aquilar
Gary Mader
Bleau LaFave
Michael Nolan
Chris Dibbern
Doug Clark
R. J. Baker
Mary Campbell
Alex Goldberg

Representing:

Introducer
Grand Island Utilities
Northwestern Energy
City of Norfolk
NMPP Energy
Metropolitan Utilities District
Elkhorn Valley Economic Development Council
Industrial Energy Users of NE and NE Resources Co.
Nebraska Resources Company

Opponents:

Bud Becker
Jill Becker
Mary Kay Miller

Neutral:

Marvin Schultes
Lynn Rex

Representing:

Source Gas LLC
Aquila
Northern Natural Gas Co.

Representing:

City of Hastings
League of NE Municipalities

Summary of purpose and/or change: This bill deals with the State Natural Gas Regulation Act, proposing to add an exception to the prohibition found within that act against extending duplicative and redundant gas mains or other utility infrastructure.

One of the key elements of the original State Natural Gas Regulation Act (LB 790, 2003) was the addition of what is now Sec. 66-1852. That provision was intended to extend for statewide application a version of a provision which had been adopted in 1999 (in LB 78) to apply only in the Omaha metropolitan area to pipelines being extended by MUD and Aquila.

Basically, the provision is a prohibition against extending natural gas infra-structure into areas where there is existing infrastructure. This was both for safety reasons and to provide consumer protection against the costs of duplicating infrastructure unnecessarily.

With the decision by the PSC last November to assume jurisdiction over intrastate pipelines, it became clear that an exemption from the strict prohibition would be necessary to enable the construction of these pipelines (transmission lines) without the need for extensive litigation or review that would remove one of the principal benefits of state jurisdiction over federal jurisdiction: more timely approval.

The original bill addressed the problem by creating a general exception to the general prohibition on the “duplicative or redundant” extension of gas mains or other natural gas services, providing that it would not apply to the extension or construction of gathering lines or transmission lines.

Explanation of amendments, if any: The committee amendments reflect the attempt by the committee to adopt the public policy position of the original bill while adapting it to the circumstances of the various parties engaged in delivering natural gas to customers in Nebraska: jurisdictional utilities, cities that own or operate their own natural gas distribution systems, and the Metropolitan Utilities District.

The current state of the law represents a delicate balance between these parties with section 66-1852 serving to help prevent any of these parties from exercising a significant competitive advantage over any other.

The balance became more precarious with the decision of the Public Service Commission in November of 2007 to assume jurisdiction to regulate intrastate transmission lines in Nebraska (as it is permitted to do under federal law when all the gas transported in the pipeline will be consumed in Nebraska).

The committee amendments are intended to avoid jeopardizing the balance while permitting all parties, consistent with the own interests, to enjoy the advantages flowing from the creation of a transmission line intended to serve their areas.

The exemption in the filed copy of the bill is deleted and replaced by five new subdivisions to section 66-1852 which deal separately with each of the classes of parties engaged in providing natural gas service in Nebraska.

It should be emphasized that the general prohibition in the statute is not repealed by this act: the changes contemplated are defined and limited exceptions to the general prohibition, operable only when applied to transmission lines and then only as defined and set forth in the specific exceptions.

New subdivision (5) defines what constitutes a transmission line, in line with the terminology generally accepted by the industry and used in federal regulations to set out the

“hierarchy” of pipelines. A transmission line is defined as being a pipeline other than a gathering pipeline (which transports natural gas from a production facility) or a distribution pipeline (which includes main pipelines and does not serve individual customers) or a service line (which does serve individual customers). Generally the transmission line is a large volume, high pressure pipeline linking a distribution (interstate) pipeline, to distribution facilities that service mains and service lines.

New subdivision (3) applies to jurisdictional utilities: private, investor-owned natural gas utilities which are subject to the jurisdiction of the Public Service Commission. This subdivision provides that the prohibition does not apply to the extension by that utility of a transmission line which connects to distribution facilities owned or operated by a jurisdictional utility.

New subdivision (4) applies to metropolitan utilities districts and jurisdictional utilities that operate in counties in which there is located the natural gas service area of a portion of the natural gas service area of a metropolitan utilities district.

This language has particular reference to the language found in section 66-1859. Since 1999 (with the passage of LB 78), the law has recognized that a special set of rules were needed to apply to the particular issues arising from the statutes governing metropolitan utilities districts and jurisdictional utilities when they were operating side-by-side in area experiencing rapid growth and development, and therefore operating in competition. This situation was further underlined and addressed by LB 1249 (2006).

New subdivision (4) was intended to maintain the current situation of the parties defined in section 66-1858 to section 66-1864. The exception here only applies to transmission lines: all other pipelines by either a metropolitan utilities district or a jurisdictional utility in metropolitan utilities district counties would still be governed as set out in current state law under those statutes.

New subdivision (4)(a) specifies that the prohibition in subdivision (1) does not apply to the extension of transmission lines by a metropolitan utilities district to distribution facilities which it owns or operates. Subsection (b) further specifies that such a transmission line does not constitute an enlargement or expansion of its natural gas service area and is not to be considered part of its natural gas service area. This is for the specific purpose of preserving the arrangements existing under current state law (in sections 66-1858 to 1864) while authorizing a metropolitan utilities district to provide itself with an additional source of natural gas to serve customers in its current service area.

New subdivision (4)(c) provides mirror restrictions for jurisdictional utilities operating in counties in which a metropolitan utilities district has a portion of its natural gas service area. If the jurisdictional utility extends a transmission line which makes its connection to distribution facilities in such a county, the transmission line is not to be considered an enlargement or expansion of the jurisdictional utility’s natural gas service area and is not to be considered part of its natural gas service area. This, too, preserves the arrangement existing under current law in counties where a metropolitan utilities district is operating.

New subdivision (5) applies to cities which own or operate their own natural gas utility. The prohibition of subdivision (1) does not apply to transmission lines extended by such a city that are linked to the city’s own distribution facilities.

New subdivision (7) is aimed at clarifying the extent of the exemption from the prohibition found in subdivision (1). In part, the prohibition there was aimed at stopping a process called “cherry picking” whereby a natural gas utility would seek to use duplicate pipelines and special arrangement to bring profitable large-volume users of another utility into its own customer base, thus shifting unavoidable basic costs of service of the original utility onto its residential user ratebase. By exempting jurisdictional utilities from the prohibition under the provisions of this bill, there was concern that transmission lines might be used to “cherry pick” large volume customers.

This provision is intended to clarify that situation. It is applicable only to jurisdictional utilities since metropolitan utilities district and city transmission lines are, by the act, only authorized to connect to distribution facilities owned or operated by the utilities district or the city.

Nothing in this act is to be construed as authorizing the extension of a transmission line by a jurisdictional utility to a large-volume ratepayer if that ratepayer has an existing source of natural gas (a pipeline link) and an adequate supply of natural gas. Further, the transmission line cannot extend to the large-volume ratepayer if it is located outside of the areas within which the jurisdictional utility has existing natural gas utility infrastructure.

In other words, this legislation is intended to permit competition for high-volume ratepayers where there a jurisdictional utility has existing utility infrastructure in the area, but the utility cannot use a transmission line as a bypass strategy for “cherry picking” outside of the area where it already has such infrastructure.

Senator Mike Friend, Chairperson