

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1072

FINAL READING

Introduced by Friend, 10.

Read first time January 22, 2008

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to the Public Service Commission; to amend
2 sections 66-1838 and 75-130.01, Reissue Revised Statutes
3 of Nebraska, and section 66-1852, Revised Statutes
4 Cumulative Supplement, 2006; to change rate filing
5 provisions under the State Natural Gas Regulation Act; to
6 change provisions relating to extension of natural gas
7 transmission lines and to contested cases; to repeal the
8 original sections; and to declare an emergency.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-1838, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 66-1838 (1) The provisions of this section apply only to
4 general rate filings.

5 (2) Except as provided in subsection (3) of this section,
6 a jurisdictional utility shall provide written notice to each city
7 that will be affected by a proposed change in rates simultaneously
8 with the filing with the commission of a request for a change
9 in rates pursuant to the State Natural Gas Regulation Act. Such
10 notice shall identify the cities that will be affected by the rate
11 filing. The jurisdictional utility shall also file the information
12 prescribed by the act and rules and regulations for rate changes
13 adopted and promulgated by the commission with each city affected
14 by such proposed rate change in electronic or digital format or,
15 upon request, as paper documents.

16 (3) A jurisdictional utility may determine not to
17 participate in negotiations with affected cities. Such decision,
18 if indicated by written notice in the initial rate filing to the
19 commission, shall relieve it from the duty of supplying notice to
20 such cities as specified in subsection (2) of this section. The
21 jurisdictional utility shall, not later than fifteen days after
22 the initial filing, inform the commission by written notice of any
23 decision not to participate in negotiations.

24 (4) Affected cities shall have a period of sixty days
25 after the date of such filing within which to adopt a resolution

1 evidencing their intent to negotiate an agreed rate change with the
2 jurisdictional utility. A copy of the resolution adopted by each
3 city under this section, notice of the rejection by a city of such
4 a resolution, or written notice by an authorized officer of the
5 city of the city's rejection of negotiations shall be provided to
6 the commission and to the jurisdictional utility within seven days
7 after its adoption.

8 (5) Any city may, at any time, by resolution adopted
9 by its governing body and filed with the commission, indicate
10 its rejection of participation in any future negotiations
11 pertaining to any rate change whenever the same may be filed.
12 Such resolution shall be treated as a duly filed notice of
13 rejection of participation in negotiations for any rate filing by
14 a jurisdictional utility at any time thereafter. The city filing
15 a resolution pursuant to this subsection shall be bound thereby
16 until such time as a resolution by the governing body of that city
17 revoking its prior rejection of participation is filed with the
18 commission.

19 (6) If the commission receives resolutions adopted prior
20 to the expiration of the sixty-day period provided for in
21 subsection (4) of this section evidencing the intent to negotiate
22 from cities representing more than fifty percent of the ratepayers
23 within the affected cities, the commission shall certify the case
24 for negotiation between such cities and the jurisdictional utility
25 and shall take no action upon the rate filing until the negotiation

1 period and any stipulated extension has expired or an agreement
2 on rates is submitted, whichever occurs first. The commission's
3 certification shall be issued within eight business days after
4 the earlier of (a) receipt of a copy of the resolutions from
5 cities representing fifty percent or more of ratepayers within the
6 affected cities or (b) the end of the sixty-day period provided for
7 in subsection (4) of this section.

8 (7) When (a) the commission receives notice or has
9 written documentary evidence on file from cities representing more
10 than fifty percent of the ratepayers within the affected cities
11 which notice or documents either expressly reject negotiations
12 or reject such a resolution or (b) the commission receives
13 written notice from the jurisdictional utility expressly rejecting
14 negotiations, the rate change review by the commission shall
15 proceed immediately from the date when the commission makes such a
16 determination or receives such notice.

17 (8) When the sixty-day period provided for in subsection
18 (4) of this section has expired without the receipt by the
19 commission of resolutions from cities representing more than fifty
20 percent of the ratepayers within the affected cities evidencing
21 their intent to negotiate an agreed rate change review by the
22 commission with the jurisdictional utility, the rate change shall
23 proceed immediately from the date when the commission makes such a
24 determination.

25 (9) If commission certification to pursue negotiations

1 is received, cities adopting resolutions to negotiate and the
2 jurisdictional utility shall enter into good faith negotiations
3 over such proposed rate change.

4 (10)(a) The jurisdictional utility's filed rates may be
5 placed into effect as interim rates, subject to refund, upon
6 the adoption of final rates sixty days after the filing with
7 the commission, if the commission certifies the rate filing for
8 negotiations.

9 (b) If the rate filing is not certified by the commission
10 for negotiations, the jurisdictional utility's filed rates may
11 be placed into effect as interim rates, subject to refund, upon
12 the adoption of final rates, ninety days after filing with the
13 commission.

14 (11) Negotiations between the cities and the
15 jurisdictional utility shall continue for a period not to
16 exceed ninety days after the date of the rate filing, except that
17 the parties may mutually agree to extend such period to a future
18 date certain and shall provide such stipulation to the commission.

19 (12) Notwithstanding any other provision of law, any
20 information exchanged between the jurisdictional utility and cities
21 is not a public record within the meaning of sections 84-712
22 to 84-712.09 and its disclosure to the commission, its staff,
23 the public advocate, or any other person or corporation, for any
24 purpose, is expressly prohibited.

25 (13) If the cities and the jurisdictional utility reach

1 agreement upon new rates, such agreement shall be reduced to
2 writing, including proposed findings of fact, proposed conclusions
3 of law, and a proposed commission order, and filed with the
4 commission. If cities representing more than fifty percent of the
5 ratepayers within the cities affected by the proposed rate change
6 enter into an agreement upon new rates and such agreement is filed
7 with and approved by the commission, such rates shall be effective
8 and binding upon all of the jurisdictional utility's ratepayers
9 affected by the rate filing.

10 (14) Any agreement filed with the commission shall be
11 presumed in the public interest, and absent any clear evidence on
12 the face of the agreement that it is contrary to the standards and
13 provisions of the State Natural Gas Regulation Act, the agreement
14 shall be approved by the commission within a reasonable time.

15 (15)(a) Except as provided in subdivision (c) of this
16 subsection, if the negotiations fail to result in an agreement
17 upon new rates, the rates requested in the rate filing shall
18 become final and no longer subject to refund if the commission
19 has not taken final action within two hundred ten days after the
20 date of the expiration of the negotiation period or after the
21 date upon which the jurisdictional utility and the cities file a
22 written agreement that the negotiations have failed and that the
23 rate change review by the commission should proceed as provided in
24 subsection (7) of this section.

25 (b) Except as provided in subdivision (c) of this

1 subsection, if the filing is not certified for negotiations,
2 the rate requested in the rate filing shall become final and no
3 longer subject to refund if the commission has not taken final
4 action within ~~two hundred ten~~ one hundred eighty days after the
5 date of the ~~filing~~, expiration of the sixty-day period provided for
6 in subsection (4) of this section or the date that the commission
7 receives notice or has accumulated written documentary evidence
8 on file from cities representing more than fifty percent of the
9 ratepayers within the affected cities, whichever is earlier, if
10 such notice or documents either expressly reject negotiations or
11 reject such a resolution.

12 (c) The commission may extend the ~~two-hundred-ten-day~~
13 deadlines specified in subdivision (a) or (b) of this subsection
14 by a period not to exceed an additional sixty days upon a
15 finding that additional time is necessary to properly fulfill its
16 responsibilities in the proceeding.

17 (16) Within thirty days after such changes have been
18 authorized by the commission or become effective, copies of
19 all tariffs, schedules, and classifications, and all terms
20 or conditions of service, except those determined to be
21 confidential under rules and regulations adopted and promulgated
22 by the commission, shall be available for public inspection in
23 every office and facility open to the general public of the
24 jurisdictional utility in this state.

25 Sec. 2. Section 66-1852, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 66-1852 (1) Except as otherwise expressly authorized in
3 the State Natural Gas Regulation Act, no person, public or private,
4 shall extend duplicative or redundant natural gas mains or other
5 natural gas services into any area which has existing natural gas
6 utility infrastructure or where a contract has been entered into
7 for the placement of natural gas utility infrastructure.

8 (2) The prohibition in subsection (1) of this section
9 shall not apply in any area in which two or more jurisdictional
10 utilities share authority to provide natural gas within the same
11 territory under franchises issued by the same city.

12 (3) The prohibition in subsection (1) of this section
13 shall not apply to the extension by a jurisdictional utility of
14 a transmission line connecting to distribution facilities owned or
15 operated by a jurisdictional utility, a city, or a metropolitan
16 utilities district or to serve city-owned electric generating
17 facilities located within the boundaries of a city within which
18 the jurisdictional utility extending the transmission line provides
19 natural gas service to customers.

20 (4) (a) The prohibition in subsection (1) of this section
21 shall not apply to the extension by a metropolitan utilities
22 district of a transmission line connecting to distribution
23 facilities owned or operated by such metropolitan utilities
24 district.

25 (b) The extension by a metropolitan utilities district

1 of a transmission line connecting to distribution facilities owned
2 or operated by such metropolitan utilities district shall not
3 constitute an enlargement or expansion of its natural gas service
4 area and shall not be considered part of its natural gas service
5 area.

6 (c) The extension of a transmission line by a
7 jurisdictional utility as provided in subsection (3) of this
8 section shall not constitute an enlargement or expansion of the
9 jurisdictional utility's natural gas service area and shall not be
10 considered part of its natural gas service area if the transmission
11 line makes its connection to distribution facilities in a county in
12 which the natural gas service area or a portion of the natural gas
13 service area of a metropolitan utilities district is located.

14 (5) The prohibition in subsection (1) of this section
15 shall not apply to the extension by a city that owns or operates a
16 natural gas utility of a transmission line that connects to its own
17 distribution facilities.

18 (6) For purposes of this section, a transmission line
19 means a pipeline, other than a gathering pipeline, distribution
20 pipeline, or service line, that transports natural gas.

21 (7) Nothing in this section shall be construed to
22 authorize a jurisdictional utility to extend a transmission line to
23 a high-volume ratepayer with an existing source and adequate
24 supply of natural gas that is located outside the area in
25 which that jurisdictional utility has existing natural gas utility

1 infrastructure.

2 Sec. 3. Section 75-130.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 75-130.01 With respect to any matter of fact or law at
5 issue in a contested case and notwithstanding any other provision
6 of law, a member, staff, or agent of the Public Service Commission
7 shall not during the pendency of any contested case heard before
8 the commission have any ex parte communication with any party
9 having an interest in the outcome of the contested case. For
10 purposes of this section, the definitions in section 84-901 shall
11 apply. Notwithstanding subdivision (4)(c) of section 84-901, this
12 section applies to all communications by a party in contested cases
13 under the State Natural Gas Regulation Act, including, but not
14 limited to, general rate filings under section 66-1838.

15 Sec. 4. Original sections 66-1838 and 75-130.01, Reissue
16 Revised Statutes of Nebraska, and section 66-1852, Revised Statutes
17 Cumulative Supplement, 2006, are repealed.

18 Sec. 5. Since an emergency exists, this act takes effect
19 when passed and approved according to law.