

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1115**

Final Reading

Introduced by Flood, 19; Schumacher, 22.

Read first time January 19, 2012

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to jurisdictional utilities; to amend sections  
2 18-2705, 66-1801, 66-1808, and 66-1831, Reissue Revised  
3 Statutes of Nebraska; to authorize construction and  
4 operation of natural gas pipeline facilities as  
5 prescribed; to define and redefine terms; to authorize  
6 certain tariffs, surcharges, and cost adjustments; to  
7 harmonize provisions; and to repeal the original  
8 sections.

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

1           Section 1. The Legislature declares it is the public  
2 policy of this state to provide adequate natural gas pipeline  
3 facilities and service in order to expand and diversify the Nebraska  
4 economy resulting in increased employment, new and expanded  
5 businesses and industries, and new and expanded sources of tax  
6 revenue.

7           Sec. 2. For purposes of sections 1 to 7 of this act:

8           (1) City means a city of the first or second class or  
9 village;

10           (2) Jurisdictional utility has the same meaning as in  
11 section 66-1802;

12           (3) Natural gas pipeline facility means a pipeline, pump,  
13 compressor, or storage or other facility, structure, or property  
14 necessary, useful, or incidental in the transportation of natural  
15 gas; and

16           (4) Rural infrastructure development means planning,  
17 financing, development, acquisition, construction, owning, operating,  
18 and maintaining a natural gas pipeline facility or entering into  
19 agreements with an interstate pipeline for existing, new, or expanded  
20 capacity on the interstate pipeline's system for the transportation  
21 of natural gas necessary to supply unserved or underserved areas; and

22           (5) Unserved or underserved area means an area in this  
23 state lacking adequate natural gas pipeline capacity to meet the  
24 demand of existing or potential end-use customers as determined by  
25 the jurisdictional utility presently serving the area. Unserved or

1 underserved area does not include any area within a city of the  
2 primary or metropolitan class.

3           Sec. 3. A city that has been authorized to utilize funds  
4 pursuant to the Local Option Municipal Economic Development Act for  
5 purposes of sections 1 to 7 and 10 of this act shall have all  
6 necessary powers to implement and to carry out its powers and duties  
7 under such sections.

8           Sec. 4. A jurisdictional utility may undertake rural  
9 infrastructure development necessary to supply unserved or  
10 underserved areas in or adjacent to areas presently served by the  
11 jurisdictional utility and not served by another jurisdictional  
12 utility.

13           Sec. 5. Prior to undertaking rural infrastructure  
14 development, a jurisdictional utility shall consider factors such as  
15 the economic impact to the area, economic feasibility, whether other  
16 options may be more in the public interest, such as utilization of  
17 any existing or planned interstate or intrastate pipeline facilities  
18 of private persons, companies, firms, or corporations, and the  
19 likelihood of successful completion and ongoing operation of the  
20 facility.

21           Sec. 6. A jurisdictional utility shall not be subject to  
22 the State Natural Gas Regulation Act to the extent it is exercising  
23 power granted in section 4 of this act except as specifically  
24 provided otherwise but shall be subject to sections 75-501 to 75-503.

25           Sec. 7. Sections 1 to 6 of this act do not apply to a

1 natural gas utility owned or operated by a city or a metropolitan  
2 utilities district.

3           Sec. 8. Section 18-2705, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           18-2705 Economic development program ~~shall mean~~ means any  
6 project or program utilizing funds derived from local sources of  
7 revenue for the purpose of providing direct or indirect financial  
8 assistance to a qualifying business or the payment of related costs  
9 and expenses or both, without regard to whether that business is  
10 identified at the time the project or program is initiated or is to  
11 be determined by specified means at some time in the future. An  
12 economic development program may include, but shall not be limited  
13 to, the following activities: Direct loans or grants to qualifying  
14 businesses for fixed assets or working capital or both; loan  
15 guarantees for qualifying business; grants for public works  
16 improvements which are essential to the location or expansion of, or  
17 the provision of new services by, a qualifying business; grants or  
18 loans for job training; the purchase of real estate, options for such  
19 purchases, and the renewal or extension of such options; the issuance  
20 of bonds as provided for in the Local Option Municipal Economic  
21 Development Act; and payments for salaries and support of city staff  
22 to implement the economic development program or the contracting of  
23 such to an outside entity. For cities of the first and second class  
24 and villages, an economic development program may also include grants  
25 or loans for the construction or rehabilitation for sale or lease of

1 housing for persons of low or moderate income. For cities of the  
2 first and second class and villages, an economic development program  
3 may also include grants, loans, or funds for rural infrastructure  
4 development as defined in section 2 of this act. An economic  
5 development program may be conducted jointly by two or more cities  
6 after the approval of the program by the voters of each participating  
7 city.

8           Sec. 9. Section 66-1801, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           66-1801 Sections 66-1801 to 66-1867 and section 10 of  
11 this act shall be known and may be cited as the State Natural Gas  
12 Regulation Act.

13           Sec. 10. (1) Prior to undertaking rural infrastructure  
14 development pursuant to sections 1 to 7 of this act, a jurisdictional  
15 utility shall file a rural infrastructure surcharge tariff with the  
16 commission consistent with the agreement negotiated pursuant to  
17 subsection (2) of this section. The filing may be a joint filing with  
18 other jurisdictional utilities and may affect more than one electing  
19 city. With the rural infrastructure surcharge tariff, the  
20 jurisdictional utility shall file:

21           (a) A map of the unserved or underserved area it proposes  
22 to serve;

23           (b) A description of the project;

24           (c) Information regarding support of the project from  
25 individuals, businesses, or government entities;

1           (d) An executed agreement with the electing city or  
2 cities; and

3           (e) The factors the jurisdictional utility has considered  
4 pursuant to section 5 of this act.

5           (2) An agreement submitted pursuant to subdivision (1)(d)  
6 of this section may include, but shall not be limited to, terms and  
7 conditions that address the following:

8           (a) Inclusion of representatives of the following  
9 possible parties: The electing city or cities; the jurisdictional  
10 utility; an interstate natural gas pipeline company; current and  
11 prospective customers; and any other interested parties;

12           (b) Impact on other cities, jurisdictional utilities,  
13 interstate natural gas pipeline companies, and current and  
14 prospective customers;

15           (c) The possibility of a joint filing with other  
16 jurisdictional utilities and agreements with other electing cities;

17           (d) The factors set forth in section 5 of this act;

18           (e) The capacity of the project;

19           (f) The potential to enhance demand for natural gas  
20 capacity created by the project;

21           (g) Ownership of the project or parts of the project;

22           (h) Participation by the electing city or cities and  
23 other parties to determine the customer or customers which will  
24 receive the additional natural gas capacity created by the project;

25           (i) Any matters involving rights-of-way and easements and

1 fees, taxes, and surcharges related thereto;

2 (j) The payment of costs of the rural infrastructure  
3 development, including, but not limited to: (i) Proposed rate  
4 increases for customers of the electing city or cities and within a  
5 city's extraterritorial zoning jurisdiction, including direct  
6 customers and residential or commercial customers; (ii) any city  
7 funds, including funds from the Local Option Municipal Economic  
8 Development Act, which may be used to pay for consultants, issue  
9 bonds, lower proposed rate increases, or otherwise finance the rural  
10 infrastructure development project; and (iii) contributions from  
11 direct customers or other sources, including, but not limited to,  
12 state or federal grants or loans; and

13 (k) Reimbursement of costs to the electing city or cities  
14 or ratepayers of the electing city or cities, including ratepayers in  
15 a city's extraterritorial zoning jurisdiction.

16 (3) A jurisdictional utility may file a gas supply cost  
17 adjustment tariff with the commission, consistent with the agreement  
18 negotiated pursuant to subsection (2) of this section, that adjusts  
19 the jurisdictional utility's residential or commercial customer rates  
20 to provide for the recovery of, but not limited to, costs related to  
21 ongoing gas supply, transmission, pipeline capacity, storage,  
22 financial instruments, or interstate pipeline charges or other  
23 related costs for rural infrastructure development.

24 (4) A rural infrastructure surcharge tariff or gas supply  
25 cost adjustment tariff shall become effective immediately upon filing

1 with the commission of all items required under this section.

2 (5) Any rural infrastructure surcharge tariff or gas  
3 supply cost adjustment tariff, and any future changes thereto,  
4 applied to high-volume customers obtaining direct service and to  
5 general system residential or commercial customers subject to  
6 jurisdiction of the commission shall be calculated and implemented in  
7 a manner proposed by the jurisdictional utility consistent with the  
8 agreement negotiated pursuant to subsection (2) of this section.

9 (6) The rural infrastructure surcharge tariff or gas  
10 supply cost adjustment tariff, and any future changes thereto, shall  
11 first be applied to customers receiving direct service from the rural  
12 infrastructure development. If such resulting rates are uneconomic or  
13 commercially unreasonable to those customers, the jurisdictional  
14 utility shall recover the costs above the rates determined by the  
15 jurisdictional utility to be economical or commercially reasonable  
16 from general system residential or commercial customers in the  
17 electing city in a manner proposed by the jurisdictional utility  
18 consistent with the agreement negotiated pursuant to subsection (2)  
19 of this section.

20 (7) A jurisdictional utility may collect a rural  
21 infrastructure surcharge or gas supply cost adjustment until costs  
22 are fully recovered even if the jurisdictional utility has not filed  
23 for or is the subject of a new general rate proceeding within that  
24 period of time.

25 (8) No more than once annually, the commission may



1 initiate a proceeding and conduct a public hearing to determine  
2 whether the rural infrastructure surcharge of a jurisdictional  
3 utility reflects the actual costs of the rural infrastructure  
4 development and to reconcile any amounts collected from rate payers  
5 with actual costs incurred by the jurisdictional utility. The  
6 commission shall make a decision as to whether the rural  
7 infrastructure surcharge reflects actual costs within ninety days  
8 after initiating the proceeding. The rural infrastructure surcharge  
9 shall be presumed to reflect the actual costs of the rural  
10 infrastructure development, unless the contrary is shown.

11 (9) Any refund, including interest thereon, shall be made  
12 to presently served ratepayers in the electing city by an appropriate  
13 adjustment shown as a credit on subsequent bills during a period  
14 selected by the jurisdictional utility, not to exceed twelve months,  
15 or by a cash refund at the option of the jurisdictional utility. The  
16 jurisdictional utility shall not be required to provide such refunds  
17 to ratepayers served at competitively set or negotiated rates or  
18 under alternative rate mechanisms when the ratepayer is paying less  
19 than the full rate determined pursuant to the gas supply cost  
20 adjustment rate schedule or under a customer choice or unbundling  
21 program.

22 (10) A jurisdictional utility is not required to proceed  
23 with rural infrastructure development in an unserved or underserved  
24 area unless required to do so under an agreement with an electing  
25 city or cities.

1           (11) A jurisdictional utility utilizing a rural  
2 infrastructure surcharge shall separately identify the surcharge on  
3 each customer's bill using language sufficiently clear to identify  
4 the purpose of the surcharge.

5           (12) For purposes of this section:

6           (a) City means a city of the first or second class or  
7 village;

8           (b) Electing city means a city that has elected through  
9 its governing body to benefit from additional natural gas supply made  
10 possible by a rural infrastructure development and has executed an  
11 agreement with the jurisdictional utility serving the city and the  
12 city's extraterritorial zoning jurisdiction to provide the additional  
13 natural gas supply in accordance with terms and conditions mutually  
14 acceptable to the city and jurisdictional utility consistent with the  
15 agreement negotiated pursuant to subsection (2) of this section;

16           (c) Rural infrastructure development means planning,  
17 financing, development, acquisition, construction, owning, operating,  
18 and maintaining a natural gas pipeline facility or entering into  
19 agreements with an interstate pipeline for existing, new, or expanded  
20 capacity on the interstate pipeline's system for the transportation  
21 of natural gas necessary to supply unserved or underserved areas; and

22           (d) Rural infrastructure surcharge means a surcharge  
23 through which a jurisdictional utility may recover costs for rural  
24 infrastructure development.

25           Sec. 11. Section 66-1808, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           66-1808 (1) The provisions of this section do not apply  
3 to general rate filings.

4           (2) Unless the commission otherwise orders, no  
5 jurisdictional utility shall make effective any changed rate or any  
6 term or condition of service pertaining to the service or rates of  
7 such utility, except by filing the same with the commission at least  
8 thirty days prior to the proposed effective date. The commission, for  
9 good cause, may allow such changed rate or any term or condition of  
10 service pertaining to the service or rates of any such utility, to  
11 become effective on less than thirty days' notice. If the commission  
12 allows a change to become effective on less than thirty days' notice,  
13 the effective date of the allowed change shall be the date  
14 established in the commission order approving such change or the date  
15 of the order if no effective date is otherwise established. Any such  
16 proposed change shall be shown by filing with the commission a  
17 schedule showing the changes, and such changes shall be plainly  
18 indicated by proper reference marks in amendments or supplements to  
19 existing tariffs, schedules, or classifications, or in new issues  
20 thereof.

21           (3) Whenever any jurisdictional utility files with the  
22 commission the changes desired to be made and put in force by such  
23 utility, the commission, either upon complaint or upon its own  
24 motion, may give notice and hold a hearing upon such proposed  
25 changes. Pending such hearing, the commission may suspend the

1 operation of such change and defer the effective date of such change  
2 in rate or any term or condition of service pertaining to the service  
3 or rates of any such utility, by delivering to such utility a  
4 statement in writing of its reasons for such suspension. The  
5 commission may not suspend a tariff filed pursuant to section 10 of  
6 this act.

7 (4) The commission shall not delay the effective date of  
8 the proposed change in rate or any term or condition of service  
9 pertaining to the service or rates of any such jurisdictional  
10 utility, more than one hundred eighty days beyond the date the  
11 utility filed its application requesting the proposed change. If the  
12 commission does not suspend the proposed change within thirty days  
13 after the date the same is filed by the utility, such proposed change  
14 shall be deemed approved by the commission and shall take effect on  
15 the proposed effective date. If the commission has not issued a final  
16 order on the proposed change in any rate or any term or condition of  
17 service pertaining to the service or rates of any such utility,  
18 within one hundred eighty days after the date the utility files its  
19 application requesting the proposed change, then the proposed change  
20 shall be deemed approved by the commission and the proposed change  
21 shall be effective immediately, except that (a) in any proceeding  
22 initiated as a result of a filing by a utility of new or changed  
23 rates or terms and conditions of service, the commission shall,  
24 within thirty days of the receipt of such filing, review the  
25 applications, documents, and submissions made with such filing to

1 determine whether or not they conform to the minimum requirements of  
2 the commission regarding such filings as established by applicable  
3 rule, regulation, or commission order. If such applications,  
4 documents, or submissions fail to substantially conform with such  
5 requirements, they will be deemed defective and the filing shall not  
6 be deemed to have been made until such applications, documents, and  
7 submissions are determined to be in conformity by the commission with  
8 minimum standards, and (b) nothing in this subsection shall preclude  
9 the jurisdictional utility and the commission from agreeing to a  
10 waiver or an extension of the one-hundred-eighty-day period.

11 (5) Except as provided in subsection (4) of this section,  
12 no change shall be made in any rate or in any term or condition of  
13 service pertaining to the service or rates of any such jurisdictional  
14 utility, without the consent of the commission. Within thirty days  
15 after such changes have been authorized by the commission or become  
16 effective as provided in subsection (4) of this section, copies of  
17 all tariffs, schedules, and classifications, and all terms or  
18 conditions of service, except those determined to be confidential  
19 under rules and regulations adopted by the commission, shall be  
20 available for public inspection in every office and facility open to  
21 the general public of such jurisdictional utility in this state.

22 (6) Except as to the time limits prescribed in subsection  
23 (4) of this section, proceedings under this section shall be  
24 conducted in accordance with rules and regulations adopted and  
25 promulgated pursuant to section 75-110.

1           Sec. 12. Section 66-1831, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           66-1831 (1) The public advocate shall have the power to:

4           (a) Investigate the legality and reasonableness of rates,  
5 charges, and practices of jurisdictional utilities except for tariffs  
6 subject to section 10 of this act;

7           (b) Petition for relief, request, initiate, and intervene  
8 in any proceeding before the commission concerning such utilities  
9 except for tariffs subject to section 10 of this act;

10           (c) Represent and appear for ratepayers and the public in  
11 proceedings before the commission and in any negotiations or other  
12 measures to resolve disputes that give rise to such proceedings  
13 except for tariffs subject to section 10 of this act;

14           (d) Represent and appear for ratepayers and the public in  
15 any negotiations or other measures to resolve disputes that give rise  
16 to proceedings before the commission and make and seek approval of  
17 agreements to settle such disputes except for tariffs subject to  
18 section 10 of this act; and

19           (e) Make motions for rehearing or reconsideration,  
20 appeal, or seek judicial review of any order or decision of the  
21 commission regarding jurisdictional utilities except for tariffs  
22 subject to section 10 of this act.

23           (2) The public advocate shall not advocate for or on  
24 behalf of any single individual, organization, or entity.

25           (3) The public advocate may enter into stipulations with

1 other parties in any proceeding to balance the interests of those it  
2 represents with the interests of the jurisdictional utilities as a  
3 means of improving the quality of resulting decisions in a highly  
4 technical environment and minimizing the cost of regulation.

5                   Sec. 13. Original sections 18-2705, 66-1801, 66-1808, and  
6 66-1831, Reissue Revised Statutes of Nebraska, are repealed.