

LEGISLATIVE BILL 1072

Approved by the Governor April 17, 2008

Introduced by Friend, 10.

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

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

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

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

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

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

(4) Affected cities shall have a period of sixty days after the date of such filing within which to adopt a resolution evidencing their intent to negotiate an agreed rate change with the jurisdictional utility. A copy of the resolution adopted by each city under this section, notice of the rejection by a city of such a resolution, or written notice by an authorized officer of the city of the city's rejection of negotiations shall be provided to the commission and to the jurisdictional utility within seven days after its adoption.

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

(6) If the commission receives resolutions adopted prior to the expiration of the sixty-day period provided for in subsection (4) of this section evidencing the intent to negotiate from cities representing more than fifty percent of the ratepayers within the affected cities, the commission shall certify the case for negotiation between such cities and the jurisdictional utility and shall take no action upon the rate filing until the negotiation period and any stipulated extension has expired or an agreement on rates is submitted, whichever occurs first. The commission's certification shall be issued within eight business days after the earlier of (a) receipt of a copy of the resolutions from cities representing fifty percent or more of ratepayers within the affected cities or (b) the end of the sixty-day period provided for in subsection (4) of this section.

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

receives such notice.

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

(9) If commission certification to pursue negotiations is received, cities adopting resolutions to negotiate and the jurisdictional utility shall enter into good faith negotiations over such proposed rate change.

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

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

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

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

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

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

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

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

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

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

Sec. 2. Section 66-1852, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

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

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

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

(b) The extension by a metropolitan utilities district of a transmission line connecting to distribution facilities owned or operated by such metropolitan utilities district shall not constitute an enlargement or expansion of its natural gas service area and shall not be considered part of its natural gas service area.

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

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

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

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

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

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

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

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