

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 1102**

Introduced by Friend, 10.

Read first time January 23, 2008

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to the State Natural Gas Regulation Act;  
2 to amend section 66-1802, Reissue Revised Statutes  
3 of Nebraska, and section 66-1801, Revised Statutes  
4 Cumulative Supplement, 2006; to define terms; to provide  
5 requirements for infrastructure system replacement  
6 mechanisms as prescribed; to harmonize provisions; and to  
7 repeal the original sections.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 66-1801, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           66-1801 Sections 66-1801 to 66-1864 and sections 3 and 4  
4 of this act shall be known and may be cited as the State Natural  
5 Gas Regulation Act.

6           Sec. 2. Section 66-1802, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           66-1802 For purposes of the State Natural Gas Regulation  
9 Act:

10           (1) Agricultural ratepayer means a ratepayer whose usage  
11 of natural gas does not qualify the ratepayer as a high-volume  
12 ratepayer and (a) whose principal use of natural gas is for  
13 agricultural crop or livestock production, irrigation pumping, crop  
14 drying, or animal feed or food production or (b) whose service is  
15 provided on an interruptible basis;

16           (2) Appropriate pretax revenue means the revenue  
17 necessary to produce net operating income equal to:

18           (a) The natural gas public utility's weighted cost  
19 of capital multiplied by the net original cost of eligible  
20 infrastructure system replacements, including recognition of  
21 accumulated deferred income taxes and accumulated depreciation  
22 associated with eligible infrastructure system replacements which  
23 are included in an effective infrastructure system replacement  
24 mechanism;

25           (b) Recovery of state, federal, and local income or

1 excise taxes applicable to such income; and

2 (c) Recovery of depreciation expenses;

3 ~~(2)~~ (3) BTU means the amount of energy necessary to raise  
4 the temperature of one pound of water one degree Fahrenheit;

5 ~~(3)~~ (4) City means any city or village in the State of  
6 Nebraska;

7 ~~(4)~~ (5) Commission means the Public Service Commission;

8 (6) Eligible infrastructure system replacement means  
9 natural gas public utility plant projects that:

10 (a) Do not increase revenue by directly connecting the  
11 infrastructure replacement to new customers;

12 (b) Are in service and used and required to be used; and

13 (c) Were not included in the natural gas public utility's  
14 rate base in its most recent general rate case;

15 ~~(5)~~ (7) Gas gathering system means a natural gas pipeline  
16 system used primarily for transporting natural gas from a wellhead,  
17 or from a metering point for natural gas produced by one or more  
18 wells, to a point of entry into a main transmission line;

19 ~~(6)~~ (8) General rate filing means any filing  
20 which requests changes in overall revenue requirements for a  
21 jurisdictional utility;

22 ~~(7)~~ (9) High-volume ratepayer means a ratepayer whose  
23 natural gas requirements equal or exceed five hundred therms per  
24 day as determined by average daily consumption;

25 (10) Infrastructure system replacement mechanism revenue

1 means revenue produced through an infrastructure system replacement  
2 mechanism exclusive of revenue from all other rates and charges;

3       ~~(8)~~ (11) Interstate pipeline means any corporation,  
4 company, individual, or association of persons or their trustees,  
5 lessees, or receivers engaged in natural gas transportation subject  
6 to the jurisdiction of the Federal Energy Regulatory Commission  
7 under the federal Natural Gas Act, 15 U.S.C. 717 et seq., as such  
8 act existed on January 1, 2003;

9       ~~(9)~~ (12) Intrastate natural gas utility business means  
10 all of that portion of the business of a natural gas public utility  
11 over which the commission has jurisdiction under the State Natural  
12 Gas Regulation Act;

13       ~~(10)~~ (13) Jurisdictional utility means a natural gas  
14 public utility subject to the jurisdiction of the commission.  
15 Jurisdictional utility does not mean a natural gas public utility  
16 which is not subject to the jurisdiction of the commission pursuant  
17 to section 66-1803;

18       ~~(11)~~ (14) Natural gas public utility means any  
19 corporation, company, individual, or association of persons  
20 or their trustees, lessees, or receivers that owns, controls,  
21 operates, or manages, except for private use, any equipment, plant,  
22 or machinery, or any part thereof, for the conveyance of natural  
23 gas through pipelines in or through any part of this state. Natural  
24 gas public utility does not mean a natural gas utility owned or  
25 operated by a city or a metropolitan utilities district. Natural

1 gas public utility does not include any activity of an otherwise  
2 jurisdictional corporation, company, individual, or association  
3 of persons or their trustees, lessees, or receivers as to the  
4 marketing or sale of compressed natural gas for end use as motor  
5 vehicle fuel. Natural gas public utility does not include any gas  
6 gathering system or interstate pipeline;

7 (15) Natural gas public utility plant projects means only  
8 the following:

9 (a) Mains, valves, service lines, regulator stations,  
10 vaults, and other pipeline system components installed to comply  
11 with state or federal safety requirements as replacements for  
12 existing facilities;

13 (b) Main relining projects, service line insertion  
14 projects, joint encapsulation projects, and other similar projects  
15 extending the useful life or enhancing the integrity of pipeline  
16 system components undertaken to comply with state or federal safety  
17 requirements; and

18 (c) Facility relocations required due to construction or  
19 improvement of a highway, road, street, public way, or other public  
20 work by or on behalf of the United States, this state, a political  
21 subdivision of this state, or another entity having the power of  
22 eminent domain, if the costs related to such projects have not been  
23 reimbursed to the natural gas public utility;

24 ~~(12)~~ (16) Rate means every compensation, charge, fare,  
25 toll, tariff, rental, and classification, or any of them, demanded,

1 observed, charged, or collected by any jurisdictional utility for  
2 any service;

3 ~~(13)~~ (17) Rate area means the geographic area within  
4 the state served by a single natural gas public utility through  
5 a common pipeline system from the same natural gas supply source  
6 within the common system for which the utility has similar costs  
7 for serving ratepayers of the same class; and

8 ~~(14)~~ (18) Therm is equivalent to one hundred thousand  
9 BTUs.

10 Sec. 3. (1) Beginning January 1, 2009, a natural gas  
11 public utility providing natural gas service may file a petition  
12 and proposed rate schedules with the commission to establish or  
13 change infrastructure system replacement mechanism rate schedules  
14 that will allow for the adjustment of the natural gas public  
15 utility's rates and charges to provide for the recovery of costs  
16 for eligible infrastructure system replacements. The commission  
17 shall not approve an infrastructure system replacement mechanism  
18 rate schedule if it would produce total annualized infrastructure  
19 system replacement mechanism revenue below the lesser of one  
20 million dollars or one-half percent of the natural gas public  
21 utility's base revenue level approved by the commission in the  
22 natural gas public utility's most recent general rate proceeding.  
23 The commission shall not approve an infrastructure system  
24 replacement mechanism rate schedule if it would produce total  
25 annualized infrastructure system replacement mechanism revenue

1 exceeding ten percent of the natural gas public utility's base  
2 revenue level approved by the commission in the natural gas public  
3 utility's most recent general rate proceeding. An infrastructure  
4 system replacement mechanism rate schedule and any future changes  
5 thereto shall be calculated and implemented in accordance with the  
6 State Natural Gas Regulation Act. Infrastructure system replacement  
7 mechanism revenue shall be subject to a refund based upon a finding  
8 and order of the commission to the extent provided in subsections  
9 (5) and (8) of section 4 of this act.

10 (2) The commission shall not approve an infrastructure  
11 system replacement mechanism rate schedule for any natural gas  
12 public utility that has not had a general rate proceeding decided  
13 or dismissed by issuance of a commission order with the past sixty  
14 months unless the natural gas public utility has filed for or is  
15 the subject of a new general rate proceeding.

16 (3) A natural gas public utility shall not collect an  
17 infrastructure system replacement mechanism rate for a period  
18 exceeding sixty months unless the natural gas public utility has  
19 filed for or is the subject of a new general rate proceeding,  
20 except that the infrastructure system replacement mechanism rate  
21 may be collected until the effective date of new rate schedules  
22 established as a result of the new general rate proceeding or until  
23 the general rate proceeding is otherwise decided or dismissed by  
24 issuance of a commission order without new rates being established.

25 Sec. 4. (1) When a natural gas public utility files a

1 petition with the commission seeking to establish or change an  
2 infrastructure system replacement mechanism rate schedule, it shall  
3 submit proposed infrastructure system replacement mechanism rate  
4 schedules and supporting documentation regarding the calculation  
5 of the proposed infrastructure system replacement mechanism rate  
6 schedule with the petition to the commission.

7 (2) (a) When a petition, along with any associated  
8 proposed rate schedules, is filed pursuant to subsection (1) of  
9 this section, the commission shall conduct an examination of the  
10 proposed infrastructure system replacement mechanism rate schedule.

11 (b) The commission shall examine information regarding  
12 the natural gas public utility to confirm that the underlying  
13 costs are in accordance with the State Natural Gas Regulation  
14 Act and to confirm proper calculation of the proposed charge.  
15 The commission shall compile a report regarding its examination  
16 not later than sixty days after the petition is filed. No other  
17 revenue requirement or ratemaking issues shall be examined in  
18 consideration of the petition or associated proposed rate schedules  
19 filed pursuant to the act.

20 (c) The commission may hold a hearing on the petition and  
21 any associated rate schedules and shall issue an order to become  
22 effective not later than one hundred twenty days after the petition  
23 is filed.

24 (d) If the commission finds that a petition complies  
25 with the requirements of the act, the commission shall enter an



1 order authorizing the natural gas public utility to impose an  
2 infrastructure system replacement mechanism rate that is sufficient  
3 to recover appropriate pretax revenue, as determined by the  
4 commission pursuant to the act.

5 (3) A natural gas public utility may effectuate a change  
6 in its rate pursuant to this section no more than once every twelve  
7 months.

8 (4) In determining the appropriate pretax revenue, the  
9 commission shall consider only the following factors:

10 (a) The net original cost of eligible infrastructure  
11 system replacements. For purposes of this section, the net  
12 original cost means the original cost of eligible infrastructure  
13 system replacements minus associated retirements of existing  
14 infrastructure;

15 (b) The accumulated deferred income taxes associated with  
16 the eligible infrastructure system replacements;

17 (c) The accumulated depreciation associated with the  
18 eligible infrastructure system replacements;

19 (d) The state, federal, and local income tax or excise  
20 rates at the time of such determination;

21 (e) The natural gas public utility's actual regulatory  
22 capital structure as determined during the most recent general rate  
23 proceeding of the natural gas public utility;

24 (f) The actual cost rates for the natural gas public  
25 utility's debt and preferred stock as determined during the most

1 recent general rate proceeding of the natural gas public utility;

2 (g) The natural gas public utility's cost of common  
3 equity as determined during the most recent general rate proceeding  
4 of the natural gas public utility; and

5 (h) The depreciation rates applicable to the eligible  
6 infrastructure system replacements at the time of such  
7 determination.

8 If information pursuant to subdivisions (e), (f), and  
9 (g) of this subsection is unavailable and the commission is  
10 not provided with such information on an agreed-upon basis,  
11 the commission shall utilize the average of the recommendations  
12 contained in the testimony submitted by the natural gas public  
13 utility during the most recent general rate proceeding of the  
14 natural gas public utility to determine the capital structure,  
15 recommended cost rates for debt and preferred stock, and  
16 recommended cost of common equity to determine the average weighted  
17 cost of capital.

18 (5)(a) The monthly infrastructure system replacement  
19 mechanism rate charge shall be allocated among the natural gas  
20 public utility's classes of customers in the same manner as  
21 costs for the same type of facilities was allocated among classes  
22 of customers in the natural gas public utility's most recent  
23 general rate proceeding. If that allocation is not available  
24 or determinable, the commission shall utilize the average of  
25 the recommendations contained in the testimony submitted by the

1 natural gas public utility regarding class allocation of costs. An  
2 infrastructure system replacement mechanism rate shall be charged  
3 to customers as a monthly fixed charge and not based on volumetric  
4 consumption. Such monthly charge shall not increase more than  
5 fifty cents per residential customer over the base rates in effect  
6 for the initial filing of an infrastructure system replacement  
7 mechanism rate schedule. Thereafter, each filing shall not increase  
8 the monthly charge more than fifty cents per residential customer  
9 over the most recent filing of an infrastructure system replacement  
10 mechanism rate schedule.

11 (b) At the end of each twelve-month period the  
12 infrastructure system replacement mechanism rate schedule is  
13 in effect, the natural gas public utility shall reconcile the  
14 differences between the revenue resulting from an infrastructure  
15 system replacement mechanism and the appropriate pretax revenue  
16 as found by the commission for that period and shall submit the  
17 reconciliation and a proposed infrastructure system replacement  
18 mechanism rate schedule adjustment to the commission for approval  
19 to recover or refund the difference, as appropriate, through  
20 adjustments of the infrastructure system replacement mechanism rate  
21 charge.

22 (6) (a) A natural gas public utility that has implemented  
23 an infrastructure system replacement mechanism rate schedule  
24 pursuant to the act shall file revised rate schedules to reset  
25 the infrastructure system replacement mechanism to zero when new

1 base rates and charges become effective for the natural gas public  
2 utility following a commission order establishing customer rates in  
3 a general rate proceeding that incorporates in the utility's base  
4 rates, subject to this section, eligible costs previously reflected  
5 in the effective infrastructure system replacement mechanism rate  
6 schedule.

7 (b) Upon the inclusion in a natural gas public utility's  
8 base rates subject to this section of eligible costs previously  
9 reflected in an infrastructure system replacement mechanism  
10 rate schedule, the natural gas public utility shall immediately  
11 thereafter reconcile any previously unreconciled infrastructure  
12 system replacement mechanism revenue as necessary to ensure that  
13 infrastructure system replacement mechanism revenue match as  
14 closely as possible the appropriate pretax revenue as found by the  
15 commission for that period.

16 (7) A natural gas public utility's filing of a petition  
17 or change to an infrastructure system replacement mechanism rate  
18 schedule pursuant to the act shall not be deemed to be a rate  
19 increase for purposes of the act.

20 (8) Commission approval of a petition, and any associated  
21 rate schedules, to establish or change an infrastructure system  
22 replacement mechanism rate schedule pursuant to the act, shall  
23 in no way be binding upon the commission in determining the  
24 ratemaking treatment to be applied to eligible infrastructure  
25 system replacements during a subsequent general rate proceeding

1 when the commission may undertake to review the reasonableness and  
2 prudence of such costs. In the event the commission disallows,  
3 during a subsequent general rate proceeding, recovery of costs  
4 associated with eligible infrastructure system replacements  
5 previously included in an infrastructure system replacement  
6 mechanism rate schedule, the natural gas public utility shall  
7 offset its infrastructure system replacement mechanism rate  
8 schedule in the future as necessary to recognize and account for  
9 any such over-collections.

10 (9) Nothing in this section shall be construed to  
11 limit the authority of the commission to review and consider  
12 infrastructure system replacement costs along with other costs  
13 during any general rate proceeding of any natural gas public  
14 utility.

15 Sec. 5. Original section 66-1802, Reissue Revised  
16 Statutes of Nebraska, and section 66-1801, Revised Statutes  
17 Cumulative Supplement, 2006, are repealed.