

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB658

Hearing Date: Tuesday March 03, 2009
Committee On: Urban Affairs
Introducer: Friend
One Liner: Provide infrastructure system replacement mechanism provisions under the State Natural Gas Regulation Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Coash, Cook, Friend, Lathrop, McGill, Rogert, White
Nay:
Absent:
Present Not Voting:

Proponents:
Senator Friend
Don Nordell
Andy Pollock

Representing:
Introducer
Black Hills Energy
NorthWestern Energy

Opponents:
Roger Cox
Chris Dibbern

Representing:
Nebraska Public Advocate
Nebraska Municipal Power Pool

Neutral:
Jerry Vap

Representing:
NE Public Service Commission

Summary of purpose and/or changes:

This bill proposes to amend the State Natural Gas Regulation Act to create a new process that would allow natural gas rates to be adjusted between general rate reviews to allow jurisdictional utilities (investor-owned natural gas providers) to recover the costs related to eligible infrastructure replacements that are undertaken to comply with state or federal safety requirements or that result from relocations resulting from construction or improvement of a highway, road, street, public way, or other public work by the United States, this state or a political subdivision of the state.

The intent of this bill is to permit jurisdictional utilities to recover the eligible costs of certain infrastructure replacement projects without the necessity of pursuing a full-scale rate review which is both time consuming and expensive.

Under the provisions of the bill, a jurisdictional utility providing natural gas service would be allowed to file a petition and a proposed rate schedule with the Public Service Commission to establish an infrastructure system replacement mechanism rate schedule and thus allow for the adjustment of the natural gas public utility's rates and charges to provide for the recovery of costs for eligible infrastructure replacements.

All of the provisions of this bill are made part of the State Natural Gas Regulation Act (Section 1).

The new definitions added by the bill are found in section 2.

Eligible infrastructure system replacements are defined as natural gas utility plant projects that a) do not increase revenues by directly connecting the infrastructure replacements to new customers, b) are in service and are required to be used, and c) were not included in the utility's rate base in the most recent general rate case.

The natural gas utility plant projects eligible for the program would include such items as new mains, valves, service

lines, regulator stations, vaults and other pipeline system components installed to comply with state or federal safety requirements; main relining projects, service line insertion projects, joint encapsulation projects and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and facility relocations due to the construction or improvement of a highway, road, street, public way, or other public work by or the United States, this state or a political subdivision of the state.

Section 3 would preserve the confidentiality of certain information the utility must provide in applying for the charges authorized necessary for the process created by the bill from disclosures which might impede the negotiations process provided for in section 66-1838.

Beginning on January 1 of 2010, a jurisdictional utility would be authorized to file a petition and proposed rate schedule with the public service commission for approval to establish or change it "infrastructure system replacement mechanism rate schedule and thus allow for the adjustment of the natural gas public utility" rates and charges to provide for the recovery of costs for eligible infrastructure replacements.

The commission could not approve an infrastructure system replacement mechanism rate schedule if it would produce replacement revenue below the lesser of one million dollars or one half of the utility's base revenue level nor could the revenue exceed ten percent of the base revenue. A utility company requesting such a proposed rate schedule must have pursued a full-scale rate case within the past 60 months and a company could not collect the special revenue for any period exceeding 60 months (Section 4).

The infrastructure system replacement mechanism rate would be determined by the commission as provided in the act and would also be subject to refund based upon findings and orders of the commission (as determined pursuant to section 5 of this bill).

In general, to receive the proposed rates, the utility is required to submit the proposed rate schedule and supporting documentation to the commission. The commission must examine the schedule and documentation to confirm that they are accurate and that the underlying costs are in accordance with the act. The commission must then issue a report on its findings within sixty days after the petition is filed. The review cannot deal with any other rate issues or revenue requirements of the utility: only on the infrastructure replacement issues. The commission may hold a hearing on the petition and shall issue its order which is to become effective not later than one hundred and twenty days after the petition is filed (Section 5(1,2)).

If the petition and schedules comply with the act, the commission would enter an order authorizing the utility to impose the authorized infrastructure system replacement mechanism rate as determined by the commission. The factors to be considered by the commission are set out in subdivision (4) of section 5 of the act. If some of the information required is unavailable, the commission would utilize the average of the recommendations contained in the testimony submitted by the utility during its most recent general rate proceeding (section 5).

The monthly charge must be allocated among the utility's classes of customers in the same manner as the costs for the same type of facilities was allocated among classes of customers in the utility's most recent rate proceeding (Section 5(5)).

The rate is to be charged to customers as a monthly fixed charge and not based on volumetric consumption. The monthly charge shall not increase more than fifty cents per residential customer over the base rates in effect at the time of the initial filing of the rate schedule.

At the end of each twelve-month period, the utility reconciles the difference between the revenue resulting from the infrastructure system replacement mechanism rate and the appropriate pre-tax revenue as found by the commission for that period and would submit the reconciliation and an appropriate rate adjustment to the commission for approval to recover or refund the difference as appropriate through future rate charges (Section 5(6)).

When a utility has implemented an infrastructure system replacement mechanism rate, the rate must be "reset" to zero when the commission has adopted a new rate schedule pursuant to a general rate proceeding that incorporates into the utility's base rate the eligible costs that were previously reflected in the infrastructure system replacement mechanism rate. The commission is not, however, bound by prior findings regarding the establishment or change of an infrastructure system replacement mechanism rate when it established new rates pursuant to a general rate proceeding, and if the commission disallows previously permitted costs, the new rates may reflect changes to compensate for over-collections.

The infrastructure system replacement mechanism rate would be charged as a monthly fixed charge and could not increase more than fifty cents per residential customer over the base rates in effect for the initial filing of the infrastructure system replacement mechanism rate schedule. Subsequent filing could not increase the monthly charge more than fifty cents per residential customer.

Explanation of amendments:

The committee amendments (a white copy) make several changes to the original bill.

Two terms are changes throughout the bill. All references to "natural gas public utilities" to "jurisdictional utilities," the more appropriate term in the State Natural Gas Regulation Act to describe investor-owned natural gas utilities (the only ones subject to rate regulation by the Public Service Commission.

Additionally, the term "infrastructure system replacement mechanism" is changed to the more accurately descriptive and intuitively meaningful term "infrastructure system replacement cost recovery charge."

The definition of "general rate filing" is amended to remove from it any filing for an infrastructure system replacement cost recovery charge.

The definition of "eligible infrastructure system replacement" (those projects that may qualify for the special charge) is amended. It would provide that the costs of a project would only be eligible for recovery to the extent that the project was a replacement (no recovery for over sizing until the next general rate filing), but it would not prohibit such over-sizing or system enhancements in an otherwise eligible project: it merely makes it clear that recovery of those costs must await the next general rate increase.

Section 3 (which amends section 66-1838) is removed from the bill. This is the section which sets out the process whereby a jurisdictional utility establishes its rates by negotiations with the cities that represent more than fifty percent of the ratepayers being served by that utility in the state (only Northwestern Public Service at this time). This section is no longer necessary since the committee amendments establish a separate process (found in new section 6).

A series of new requirements is added to the bill for information which must be filed with the commission at the time the petition is filed: a list of eligible projects, a description of the projects, the location of the projects, the purpose of the projects, the dates construction began and ended, the total expenses for each project at the time of completion, and the extent to which expenses are eligible for inclusion in the calculation of the infrastructure system replacement cost recovery charge.

The process for review by the public service commission of the application for an infrastructure system replacement cost recovery charge is revised to better reflect the actual practice of the commission when reviewing rate filings. A report on the petition and supporting documentation is prepared by the public advocate and presented at the hearing before the commission. The public advocate serves as trial staff for the commission at the hearing (one of the principal duties of the advocate under the SNGRA). Commission staff and consultants are not required to testify (although they may do so if the commission wishes). The commission reviews the application after the hearing and, with staff assistance, crafts an order approving, modifying, or denying the infrastructure system replacement cost recovery charge request.

The commission final order would take effect within ninety days instead of one hundred and twenty days after the petition is filed.

Confidentiality provisions are removed from subdivision (4) of section 5 because they were rendered unnecessary by the addition of new section 6.

A new section 6 is added to establish the procedure for applying for the infrastructure system replacement cost recovery charge by utilities that, in the most recent general rate proceeding, pursued rate adjustment by municipal negotiation. The process for applying for the cost recovery charge would mirror the process for a general rate filing for such a utility: filing the application with the cities, organization of the cities to review the application (if cities representing at least 50% of the ratepayers agree), application for loan funds to finance the review, negotiations to determine the appropriate cost recovery charge, and certification of result by the PSC. An abbreviated time line for consideration is set out and authority is provided for the utility to initiate a contested proceeding before the PSC if the cities and the utility cannot reach agreement.

In general, the infrastructure system replacement cost recovery charge ends with implementation of new general rates following a general rate filing and review, the statute mandating that that process would resolve all remaining issues and reconcile costs.

Mike Friend, Chairperson