

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 658

Introduced by Friend, 10.

Read first time January 21, 2009

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 of
3 Nebraska, and sections 66-1801 and 66-1838, Revised
4 Statutes Cumulative Supplement, 2008; to define terms;
5 to provide requirements for infrastructure system
6 replacement mechanisms as prescribed; to harmonize
7 provisions; and to 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, 2008, is amended to read:

3 66-1801 Sections 66-1801 to 66-1864 and sections 4 and 5
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. Section 66-1838, Revised Statutes Cumulative
11 Supplement, 2008, is amended to read:

12 66-1838 (1) The provisions of this section apply only to
13 general rate filings.

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

25 (3) A jurisdictional utility may determine not to

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

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

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

1 revoking its prior rejection of participation is filed with the
2 commission.

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

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

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

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

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

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

23 (11) Negotiations between the cities and the
24 jurisdictional utility shall continue for a period not to
25 exceed ninety days after the date of the rate filing, except that

1 the parties may mutually agree to extend such period to a future
2 date certain and shall provide such stipulation to the commission.

3 (12) Notwithstanding any other provision of law, any
4 information exchanged between the jurisdictional utility and cities
5 is not a public record within the meaning of sections 84-712 to
6 84-712.09 and except as provided in subsection (4) of section 5 of
7 this act, its disclosure to the commission, its staff, the public
8 advocate, or any other person or corporation, for any purpose, is
9 expressly prohibited.

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

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

25 (15)(a) Except as provided in subdivision (c) of this

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

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

21 (c) The commission may extend the deadlines specified
22 in subdivision (a) or (b) of this subsection by a period not to
23 exceed an additional sixty days upon a finding that additional
24 time is necessary to properly fulfill its responsibilities in the
25 proceeding.

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

9 Sec. 4. (1) Beginning January 1, 2010, a natural gas
10 public utility providing natural gas service may file a petition
11 and proposed rate schedules with the commission to establish or
12 change infrastructure system replacement mechanism rate schedules
13 that will allow for the adjustment of the natural gas public
14 utility's rates and charges to provide for the recovery of costs
15 for eligible infrastructure system replacements. The commission
16 shall not approve an infrastructure system replacement mechanism
17 rate schedule if it would produce total annualized infrastructure
18 system replacement mechanism revenue below the lesser of one
19 million dollars or one-half percent of the natural gas public
20 utility's base revenue level approved by the commission in the
21 natural gas public utility's most recent general rate proceeding.
22 The commission shall not approve an infrastructure system
23 replacement mechanism rate schedule if it would produce total
24 annualized infrastructure system replacement mechanism revenue
25 exceeding ten percent of the natural gas public utility's base

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

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

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

24 Sec. 5. (1) When a natural gas public utility files a
25 petition with the commission seeking to establish or change an

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

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

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

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

23 (d) If the commission finds that a petition complies
24 with the requirements of the act, the commission shall enter an
25 order authorizing the natural gas public utility to impose an

1 infrastructure system replacement mechanism rate that is sufficient
2 to recover appropriate pretax revenue, as determined by the
3 commission pursuant to the act.

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

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

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

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

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

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

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

23 (f) The actual cost rates for the natural gas public
24 utility's debt and preferred stock as determined during the most
25 recent general rate proceeding of the natural gas public utility;

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

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

7 If information pursuant to subdivision (e), (f), or (g)
8 of this subsection is not considered a public record within the
9 meaning of sections 84-712 to 84-712.09, as provided in subsection
10 (12) of section 66-1838, such information may be submitted to
11 the commission by the natural gas public utility for the limited
12 purpose of consideration by the commission under this subsection
13 subject to a nondisclosure agreement which shall be executed by the
14 natural gas public utility and commission members and staff who
15 participate in the review and consideration of the information.

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

1 (5) (a) The monthly infrastructure system replacement
2 mechanism rate charge shall be allocated among the natural gas
3 public utility's classes of customers in the same manner as
4 costs for the same type of facilities was allocated among classes
5 of customers in the natural gas public utility's most recent
6 general rate proceeding. If that allocation is not available
7 or determinable, the commission shall utilize the average of
8 the recommendations contained in the testimony submitted by the
9 natural gas public utility regarding class allocation of costs. An
10 infrastructure system replacement mechanism rate shall be charged
11 to customers as a monthly fixed charge and not based on volumetric
12 consumption. Such monthly charge shall not increase more than
13 fifty cents per residential customer over the base rates in effect
14 for the initial filing of an infrastructure system replacement
15 mechanism rate schedule. Thereafter, each filing shall not increase
16 the monthly charge more than fifty cents per residential customer
17 over the most recent filing of an infrastructure system replacement
18 mechanism rate schedule.

19 (b) At the end of each twelve-month period the
20 infrastructure system replacement mechanism rate schedule is
21 in effect, the natural gas public utility shall reconcile the
22 differences between the revenue resulting from an infrastructure
23 system replacement mechanism and the appropriate pretax revenue
24 as found by the commission for that period and shall submit the
25 reconciliation and a proposed infrastructure system replacement

1 mechanism rate schedule adjustment to the commission for approval
2 to recover or refund the difference, as appropriate, through
3 adjustments of the infrastructure system replacement mechanism rate
4 charge.

5 (6) (a) A natural gas public utility that has implemented
6 an infrastructure system replacement mechanism rate schedule
7 pursuant to the act shall file revised rate schedules to reset
8 the infrastructure system replacement mechanism to zero when new
9 base rates and charges become effective for the natural gas public
10 utility following a commission order establishing customer rates in
11 a general rate proceeding that incorporates in the utility's base
12 rates, subject to this section, eligible costs previously reflected
13 in the effective infrastructure system replacement mechanism rate
14 schedule.

15 (b) Upon the inclusion in a natural gas public utility's
16 base rates subject to this section of eligible costs previously
17 reflected in an infrastructure system replacement mechanism
18 rate schedule, the natural gas public utility shall immediately
19 thereafter reconcile any previously unreconciled infrastructure
20 system replacement mechanism revenue as necessary to ensure that
21 infrastructure system replacement mechanism revenue match as
22 closely as possible the appropriate pretax revenue as found by the
23 commission for that period.

24 (7) A natural gas public utility's filing of a petition
25 or change to an infrastructure system replacement mechanism rate

1 schedule pursuant to the act shall not be deemed to be a rate
2 increase for purposes of the act.

3 (8) Commission approval of a petition, and any associated
4 rate schedules, to establish or change an infrastructure system
5 replacement mechanism rate schedule pursuant to the act, shall
6 in no way be binding upon the commission in determining the
7 ratemaking treatment to be applied to eligible infrastructure
8 system replacements during a subsequent general rate proceeding
9 when the commission may undertake to review the reasonableness and
10 prudence of such costs. In the event the commission disallows,
11 during a subsequent general rate proceeding, recovery of costs
12 associated with eligible infrastructure system replacements
13 previously included in an infrastructure system replacement
14 mechanism rate schedule, the natural gas public utility shall
15 offset its infrastructure system replacement mechanism rate
16 schedule in the future as necessary to recognize and account for
17 any such over-collections.

18 (9) Nothing in this section shall be construed to
19 limit the authority of the commission to review and consider
20 infrastructure system replacement costs along with other costs
21 during any general rate proceeding of any natural gas public
22 utility.

23 Sec. 6. Original section 66-1802, Reissue Revised
24 Statutes of Nebraska, and sections 66-1801 and 66-1838, Revised
25 Statutes Cumulative Supplement, 2008, are repealed.