

LEGISLATIVE BILL 1115

Approved by the Governor April 10, 2012

Introduced by Flood, 19; Schumacher, 22.

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

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

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

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

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

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

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

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

(5) Unserved or underserved area means an area in this state lacking adequate natural gas pipeline capacity to meet the demand of existing or potential end-use customers as determined by the jurisdictional utility presently serving the area. Unserved or underserved area does not include any area within a city of the primary or metropolitan class.

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

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

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

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

Sec. 7. Sections 1 to 6 of this act do not apply to a natural gas utility owned or operated by a city or a metropolitan utilities district.

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

18-2705 Economic development program shall mean means any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related costs and expenses or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future. An economic development program may include, but shall not be limited to, the following activities: Direct loans or grants to qualifying businesses for fixed assets or working capital or both; loan guarantees for qualifying business; grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business; grants or loans for job training; the purchase of real

estate, options for such purchases, and the renewal or extension of such options; the issuance of bonds as provided for in the Local Option Municipal Economic Development Act; and payments for salaries and support of city staff to implement the economic development program or the contracting of such to an outside entity. For cities of the first and second class and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income. For cities of the first and second class and villages, an economic development program may also include grants, loans, or funds for rural infrastructure development as defined in section 2 of this act. An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city.

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

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

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

- (a) A map of the unserved or underserved area it proposes to serve;
- (b) A description of the project;
- (c) Information regarding support of the project from individuals, businesses, or government entities;
- (d) An executed agreement with the electing city or cities; and
- (e) The factors the jurisdictional utility has considered pursuant to section 5 of this act.

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

- (a) Inclusion of representatives of the following possible parties: The electing city or cities; the jurisdictional utility; an interstate natural gas pipeline company; current and prospective customers; and any other interested parties;
- (b) Impact on other cities, jurisdictional utilities, interstate natural gas pipeline companies, and current and prospective customers;
- (c) The possibility of a joint filing with other jurisdictional utilities and agreements with other electing cities;
- (d) The factors set forth in section 5 of this act;
- (e) The capacity of the project;
- (f) The potential to enhance demand for natural gas capacity created by the project;
- (g) Ownership of the project or parts of the project;
- (h) Participation by the electing city or cities and other parties to determine the customer or customers which will receive the additional natural gas capacity created by the project;
- (i) Any matters involving rights-of-way and easements and fees, taxes, and surcharges related thereto;
- (j) The payment of costs of the rural infrastructure development, including, but not limited to: (i) Proposed rate increases for customers of the electing city or cities and within a city's extraterritorial zoning jurisdiction, including direct customers and residential or commercial customers; (ii) any city funds, including funds from the Local Option Municipal Economic Development Act, which may be used to pay for consultants, issue bonds, lower proposed rate increases, or otherwise finance the rural infrastructure development project; and (iii) contributions from direct customers or other sources, including, but not limited to, state or federal grants or loans; and
- (k) Reimbursement of costs to the electing city or cities or ratepayers of the electing city or cities, including ratepayers in a city's extraterritorial zoning jurisdiction.

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

(4) A rural infrastructure surcharge tariff or gas supply cost

adjustment tariff shall become effective immediately upon filing with the commission of all items required under this section.

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

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

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

(8) No more than once annually, the commission may initiate a proceeding and conduct a public hearing to determine whether the rural infrastructure surcharge of a jurisdictional utility reflects the actual costs of the rural infrastructure development and to reconcile any amounts collected from rate payers with actual costs incurred by the jurisdictional utility. The commission shall make a decision as to whether the rural infrastructure surcharge reflects actual costs within ninety days after initiating the proceeding. The rural infrastructure surcharge shall be presumed to reflect the actual costs of the rural infrastructure development, unless the contrary is shown.

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

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

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

(12) For purposes of this section:

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

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

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

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

Sec. 11. Section 66-1808, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) Unless the commission otherwise orders, no jurisdictional utility shall make effective any changed rate or any term or condition of service pertaining to the service or rates of such utility, except by

filing the same with the commission at least thirty days prior to the proposed effective date. The commission, for good cause, may allow such changed rate or any term or condition of service pertaining to the service or rates of any such utility, to become effective on less than thirty days' notice. If the commission allows a change to become effective on less than thirty days' notice, the effective date of the allowed change shall be the date established in the commission order approving such change or the date of the order if no effective date is otherwise established. Any such proposed change shall be shown by filing with the commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules, or classifications, or in new issues thereof.

(3) Whenever any jurisdictional utility files with the commission the changes desired to be made and put in force by such utility, the commission, either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such change and defer the effective date of such change in rate or any term or condition of service pertaining to the service or rates of any such utility, by delivering to such utility a statement in writing of its reasons for such suspension. The commission may not suspend a tariff filed pursuant to section 10 of this act.

(4) The commission shall not delay the effective date of the proposed change in rate or any term or condition of service pertaining to the service or rates of any such jurisdictional utility, more than one hundred eighty days beyond the date the utility filed its application requesting the proposed change. If the commission does not suspend the proposed change within thirty days after the date the same is filed by the utility, such proposed change shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate or any term or condition of service pertaining to the service or rates of any such utility, within one hundred eighty days after the date the utility files its application requesting the proposed change, then the proposed change shall be deemed approved by the commission and the proposed change shall be effective immediately, except that (a) in any proceeding initiated as a result of a filing by a utility of new or changed rates or terms and conditions of service, the commission shall, within thirty days of the receipt of such filing, review the applications, documents, and submissions made with such filing to determine whether or not they conform to the minimum requirements of the commission regarding such filings as established by applicable rule, regulation, or commission order. If such applications, documents, or submissions fail to substantially conform with such requirements, they will be deemed defective and the filing shall not be deemed to have been made until such applications, documents, and submissions are determined to be in conformity by the commission with minimum standards, and (b) nothing in this subsection shall preclude the jurisdictional utility and the commission from agreeing to a waiver or an extension of the one-hundred-eighty-day period.

(5) Except as provided in subsection (4) of this section, no change shall be made in any rate or in any term or condition of service pertaining to the service or rates of any such jurisdictional utility, without the consent of the commission. Within thirty days after such changes have been authorized by the commission or become effective as provided in subsection (4) of this section, 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 by the commission, shall be available for public inspection in every office and facility open to the general public of such jurisdictional utility in this state.

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

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

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

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

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

(c) Represent and appear for ratepayers and the public in proceedings before the commission and in any negotiations or other measures to resolve disputes that give rise to such proceedings except for tariffs subject

to section 10 of this act;

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

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

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

(3) The public advocate may enter into stipulations with other parties in any proceeding to balance the interests of those it represents with the interests of the jurisdictional utilities as a means of improving the quality of resulting decisions in a highly technical environment and minimizing the cost of regulation.

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