

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 404

Introduced by McGill, 26.

Read first time January 22, 2013

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to the State Natural Gas Regulation Act; to amend
2 sections 66-1866 and 66-1867, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to infrastructure
4 system replacement cost recovery charges; and to repeal
5 the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-1866, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 66-1866 (1) This section applies to applications for an
4 infrastructure system replacement cost recovery charge by a
5 jurisdictional utility whose last general rate filing was not the
6 subject of negotiations with affected cities as provided for in
7 section 66-1838.

8 (2) When a jurisdictional utility governed by this
9 section files an application with the commission seeking to establish
10 or change any infrastructure system replacement cost recovery charge
11 rate schedules, it shall submit to the commission with the
12 application proposed infrastructure system replacement cost recovery
13 charge rate schedules and supporting documentation regarding the
14 calculation of the proposed infrastructure system replacement cost
15 recovery charge rate schedules, including (a) a list of eligible
16 projects, (b) a description of the projects, (c) the location of the
17 projects, (d) the purpose of the projects, (e) the dates construction
18 began and ended, (f) the total expenses for each project at
19 completion, and (g) the extent to which such expenses are eligible
20 for inclusion in the calculation of the infrastructure system
21 replacement cost recovery charge.

22 (3)(a) When an application, along with any associated
23 proposed rate schedules and documentation, is filed pursuant to
24 subsection (2) of this section, the public advocate shall conduct an
25 examination of the proposed infrastructure system replacement cost

1 recovery charge rate schedules.

2 (b) The public advocate shall cause an examination to be
3 made of information regarding the jurisdictional utility to confirm
4 that the underlying costs are in accordance with the State Natural
5 Gas Regulation Act and to confirm proper calculation of the proposed
6 infrastructure system replacement cost recovery charge rates and rate
7 schedules. The commission shall require a report regarding such
8 examination to be prepared and filed with the commission not later
9 than sixty days after the application is filed. No other revenue
10 requirement or ratemaking issue shall be examined in consideration of
11 the application or associated proposed rate schedules filed pursuant
12 to the act unless the consideration of such affects the determination
13 of the validity of the proposed infrastructure system replacement
14 cost recovery charge rate schedules.

15 (c) The commission shall hold a hearing on the
16 application and any associated rate schedules at which the public
17 advocate shall present his or her report and shall act as trial staff
18 before the commission. The commission shall issue an order to become
19 effective not later than one hundred twenty days after the
20 application is filed, except that the commission may, for good cause,
21 extend such period for an additional thirty days.

22 (d) If the commission finds that an application complies
23 with the requirements of the act, the commission shall enter an order
24 authorizing the jurisdictional utility to impose an infrastructure
25 system replacement cost recovery charge rate that is sufficient to

1 recover appropriate pretax revenue, as determined by the commission
2 pursuant to the act.

3 (4) A jurisdictional utility may apply for a change in
4 any infrastructure system replacement cost recovery charge rate
5 schedules approved pursuant to this section no more than once in any
6 twelve-month period. Any such application for a change shall be
7 pursued in the manner provided for in this section.

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

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

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

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

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

4 (h) The depreciation rates applicable to the eligible
5 infrastructure system replacements at the time of the most recent
6 general rate proceeding of the jurisdictional utility.

7 (6)(a) The monthly infrastructure system replacement cost
8 recovery charge rate shall be allocated among the jurisdictional
9 utility's classes of customers in the same manner as costs for the
10 same type of facilities were allocated among classes of customers in
11 the jurisdictional utility's most recent general rate proceeding. An
12 infrastructure system replacement cost recovery charge rate shall be
13 assessed to customers as a monthly fixed charge and not based on
14 volumetric consumption. ~~Such monthly charge shall not increase more
15 than fifty cents per residential customer over the base rates in
16 effect at the time of the initial filing for any infrastructure
17 system replacement cost recovery charge rate schedules. Thereafter,
18 each subsequent filing shall not increase the monthly charge by more
19 than fifty cents per residential customer over that charge in
20 existence at the time of the most recent application for any
21 infrastructure system replacement cost recovery charge rate
22 schedules.~~

23 (b) At the end of each twelve-month period during which
24 the infrastructure system replacement cost recovery charge rate
25 schedules are in effect, the jurisdictional utility shall reconcile

1 the differences between the revenue resulting from the infrastructure
2 system replacement cost recovery charge and the appropriate pretax
3 revenue as found by the commission for that period and shall submit
4 the reconciliation and any proposed infrastructure system replacement
5 cost recovery charge rate schedules adjustment to the commission for
6 approval to recover or refund the difference, as appropriate, through
7 adjustments of the infrastructure system replacement cost recovery
8 charge rate.

9 (7)(a) A jurisdictional utility that has implemented any
10 infrastructure system replacement cost recovery charge rate schedules
11 pursuant to the act shall cease to collect such charges when new base
12 rates and charges become effective for the jurisdictional utility
13 following a commission order establishing customer rates in a general
14 rate proceeding.

15 (b) In any subsequent general rate proceeding involving a
16 jurisdictional utility which is collecting charges pursuant to any
17 infrastructure system replacement cost recovery charge rate
18 schedules, the commission shall reconcile any previously unreconciled
19 infrastructure system replacement cost recovery charge revenue as
20 necessary to ensure that the revenue matches as closely as possible
21 to the appropriate pretax revenue as found by the commission for that
22 period.

23 (8) In the event the commission disallows, during a
24 subsequent general rate proceeding, recovery of costs associated with
25 eligible infrastructure system replacements previously included in

1 any infrastructure system replacement cost recovery charge rate
2 schedules, the commission shall order the jurisdictional utility to
3 make such rate adjustments as necessary to recognize and account for
4 any such overcollections.

5 (9) Nothing in this section shall be construed to limit
6 the authority of the commission to review and consider infrastructure
7 system replacement costs along with other costs during any general
8 rate proceeding of any jurisdictional utility.

9 Sec. 2. Section 66-1867, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 66-1867 (1) This section applies to applications for an
12 infrastructure system replacement cost recovery charge by a
13 jurisdictional utility whose last general rate filing was the subject
14 of negotiations with affected cities as provided for in section
15 66-1838.

16 (2) When a jurisdictional utility governed by this
17 section files an application with the commission seeking to establish
18 or change any infrastructure system replacement cost recovery charge
19 rate schedules, it shall submit proposed infrastructure system
20 replacement cost recovery charge rate schedules and supporting
21 documentation regarding the calculation of the proposed
22 infrastructure system replacement cost recovery charge rate schedules
23 with the application and shall provide written notice to each city
24 that will be affected by the proposed infrastructure system
25 replacement cost recovery charge rates simultaneously with the filing

1 with the commission. Such notice shall identify the cities that will
2 be affected by the filing. The jurisdictional utility shall file
3 copies of the notice with the commission and shall file with the
4 affected cities the information prescribed by this section with each
5 city affected by the proposed infrastructure system replacement cost
6 recovery charge in electronic or digital form or, upon request, in
7 paper form.

8 (3) The jurisdictional utility shall file with the cities
9 and the commission the infrastructure system replacement cost
10 recovery charge rate schedules and supporting documentation regarding
11 the calculation of the proposed infrastructure system replacement
12 cost recovery charge rate schedules, including (a) a list of eligible
13 projects, (b) a description of the projects, (c) the location of the
14 projects, (d) the purpose of the projects, (e) the dates construction
15 began and ended, (f) the total expenses for each project at
16 completion, and (g) the extent to which such expenses are eligible
17 for inclusion in the calculation of the infrastructure system
18 replacement cost recovery charge rate.

19 (4)(a) Affected cities shall have a period of thirty days
20 after the date of such filing within which to adopt a resolution
21 evidencing their intent to negotiate an infrastructure system
22 replacement cost recovery charge rate with the jurisdictional
23 utility. A copy of the resolution in support of negotiations adopted
24 by each city under this section or a copy of the resolution of the
25 rejection of the offer of negotiations shall be provided to the

1 commission and the jurisdictional utility within seven days after its
2 adoption.

3 (b) If the commission receives resolutions adopted prior
4 to the expiration of the thirty-day period provided for in
5 subdivision (a) of this subsection evidencing the intent from cities
6 representing more than fifty percent of the ratepayers within the
7 affected cities to negotiate with the jurisdictional utility an
8 infrastructure system replacement cost recovery charge rate, the
9 commission shall certify the case for negotiation between such cities
10 and the jurisdictional utility and shall take no action upon the
11 application and filings regarding such charge until the negotiation
12 period and any stipulated extension has expired or an agreement on
13 rates is submitted, whichever occurs first.

14 (c) If the commission receives copies of resolutions from
15 cities representing more than fifty percent of the ratepayers within
16 the affected cities which expressly reject negotiations, the
17 infrastructure system replacement cost recovery charge rate review
18 shall proceed immediately from the date when the commission makes
19 such a determination in the manner provided for in section 66-1866.

20 (d) If commission certification to pursue negotiations is
21 entered, the cities that have adopted resolutions to negotiate and
22 the jurisdictional utility shall enter into good faith negotiations
23 over the proposed infrastructure system replacement cost recovery
24 charge rate.

25 (e) Negotiations between the cities and the

1 jurisdictional utility shall continue for a period not to exceed
2 thirty days after the date of the commission's certification to
3 pursue negotiations, except that the parties may mutually agree to
4 extend such period to a future date certain and shall provide such
5 stipulation to the commission.

6 (f) If the cities and the jurisdictional utility reach
7 agreement upon the proposed infrastructure system replacement cost
8 recovery charge rate schedules, such agreement shall be put into
9 writing and filed with the commission. If cities representing more
10 than fifty percent of the ratepayers within the cities affected by
11 the proposed infrastructure system replacement cost recovery charge
12 rate schedules enter into an agreement upon such charges and the
13 agreement is filed with and approved by the commission, such
14 infrastructure system replacement cost recovery charge rate schedules
15 shall be effective and binding upon all of the jurisdictional
16 utility's ratepayers within the affected cities. The commission shall
17 enter its order either approving or rejecting such infrastructure
18 system replacement cost recovery charge rate schedules within thirty
19 days after the date of the filing of the agreement with the
20 commission.

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

1 (h) If the negotiations fail to result in an agreement
2 upon any infrastructure system replacement cost recovery charge rate
3 schedules within the time permitted by this section for such
4 negotiations, the jurisdictional utility may formally notify the
5 commission of this fact and the matter shall be submitted for
6 determination by the commission as a contested proceeding with the
7 affected cities as one party and the jurisdictional utility as the
8 other. The affected cities and the jurisdictional utility shall
9 submit any documents, data, or information in support of the city's
10 or jurisdictional utility's position to the commission in a report to
11 be filed not later than fourteen days after the commission receives
12 notice that negotiations have failed and formally notifies the
13 parties that it will be hearing the matter as a contested case. The
14 commission shall hold a hearing in the case not later than thirty-
15 five days after the receipt of the reports of both parties. In
16 determining the appropriate pretax revenue of the jurisdictional
17 utility, the commission shall consider the factors set out in
18 subsection (5) of section 66-1866. A final determination by the
19 commission shall be rendered by the commission within twenty-one days
20 after the adjournment of the hearing.

21 (i) If information filed pursuant to subdivision (h) of
22 this subsection is not considered a public record within the meaning
23 of sections 84-712 to 84-712.09, such information may be submitted to
24 the commission by the jurisdictional utility or affected cities for
25 the limited purpose of consideration by the commission under this

1 section subject to a protective order issued by the commission.

2 (j) Within thirty days after any infrastructure system
3 replacement cost recovery charge rate schedules approved by the
4 commission pursuant to this section become effective, copies of all
5 documents relating to such infrastructure system replacement cost
6 recovery charge rate schedules, except those determined to be
7 confidential under rules and regulations adopted and promulgated by
8 the commission or that may be withheld from the public pursuant to
9 subdivision (h) or (j) of this subsection, shall be available for
10 public inspection in every office and facility open to the general
11 public of the jurisdictional utility in this state.

12 (5) A jurisdictional utility may apply for a change in
13 any infrastructure system replacement cost recovery charge rate
14 schedules approved pursuant to this section no more than once in any
15 twelve-month period. Any such application for a change shall be
16 pursued in the manner provided for in this section.

17 (6)(a) The monthly infrastructure system replacement cost
18 recovery charge rate shall be allocated among the jurisdictional
19 utility's classes of customers in the same manner as costs for the
20 same type of facilities were allocated among classes of customers in
21 the jurisdictional utility's most recent general rate proceeding. An
22 infrastructure system replacement cost recovery charge rate shall be
23 assessed to customers as a monthly fixed charge and not based on
24 volumetric consumption. ~~Such monthly charge shall not increase more~~
25 ~~than fifty cents per residential customer over the base rates in~~

1 ~~effect at the time of the initial filing for any infrastructure~~
2 ~~system replacement cost recovery charge rate schedules. Thereafter,~~
3 ~~each subsequent filing shall not increase the monthly charge by more~~
4 ~~than fifty cents per residential customer over that charge in~~
5 ~~existence at the time of the most recent application for any~~
6 ~~infrastructure system replacement cost recovery charge rate~~
7 ~~schedules.~~

8 (b) At the end of each twelve-month period during which
9 the infrastructure system replacement cost recovery charge rate
10 schedules are in effect, the jurisdictional utility shall reconcile
11 the differences between the revenue resulting from an infrastructure
12 system replacement cost recovery charge and the appropriate pretax
13 revenue for that period and shall submit the reconciliation and any
14 proposed infrastructure system replacement cost recovery charge rate
15 schedules adjustment to the affected cities for approval to recover
16 or refund the difference, as appropriate, through adjustments of the
17 infrastructure system replacement cost recovery charge rate. Review
18 and approval of such reconciliation or adjustment shall proceed in
19 the manner set out in the commission order on the initial application
20 for an infrastructure system replacement cost recovery charge rate.

21 (7)(a) A jurisdictional utility that has implemented any
22 infrastructure system replacement cost recovery charge rate schedules
23 pursuant to this section shall cease to collect such charges when new
24 base rates and charges become effective for the jurisdictional
25 utility following a commission order establishing or approving

1 customer rates in a subsequent general rate proceeding.

2 (b) In any subsequent general rate proceeding involving a
3 jurisdictional utility which is collecting charges pursuant to any
4 infrastructure system replacement cost recovery charge rate
5 schedules, the new general rates shall reflect a reconciliation of
6 any previously unreconciled infrastructure system replacement cost
7 recovery charge revenue as necessary to ensure that the revenue
8 matches as closely as possible to the appropriate pretax revenue for
9 that period as determined in the general rate proceeding.

10 (c) If, during a subsequent general rate proceeding, the
11 recovery of certain costs associated with eligible infrastructure
12 system replacements are disallowed, the new general rates approved
13 shall include such adjustments as are necessary to recognize and
14 account for any overcollections.

15 (8) Nothing in this section shall be construed to limit
16 the authority of the commission or affected cities engaged in
17 negotiations regarding a general rate filing with a jurisdictional
18 utility to review and consider infrastructure system replacement cost
19 recovery charge rates along with other costs during any general rate
20 proceeding of such jurisdictional utility.

21 Sec. 3. Original sections 66-1866 and 66-1867, Reissue
22 Revised Statutes of Nebraska, are repealed.